

## Chapter 22

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**ARTICLE I. IN GENERAL****Sec. 22-1. Private detectives.**

No person shall engage in the business of private detective within the city until he has secured a city business license and paid the city license tax. No person shall receive a city license until he has made application to the state board of private detective and security agencies as required by O.C.G.A. § 43-38-1 et seq.

(Code 1986, § 9-6-2)

**Sec. 22-2. Wrecker and towing services.**

(a) All licenses for wrecker or automobile or truck towing shall be subject to certain rules and regulations of the city.

(b) All licensees for the towing of motor vehicles shall exercise due care for all vehicles in their care, custody and control, and shall not permit any private use thereof by the licensee or the licensee's family or employees, agents or servants.

(c) The licensee for the towing of motor vehicles shall place the vehicles within an enclosure at least six feet in height and consisting of a chainlink fence or other comparable fencing, and no person shall be permitted within the enclosure other than the licensee, his agents, servants and employees.

(d) In the event of the failure of the licensee for the towing of motor vehicles to strictly observe the provisions of this section, a public hearing may be held thereon and the license may be suspended or revoked upon due cause being shown.

(e) The violation of this section shall subject the licensee to penalties as prescribed in section 1-11.

(Code 1986, § 9-6-4; Ord. of 8-18-86, §§ 3-201—3-205)

**Sec. 22-3. Reserved.**

**Editor's note**—Ord. No. 2000-01, adopted February 7, 2000, repealed former section 22-3, which pertained to itinerant contractors' registration permit, and derived from Ord. No. 95-7, § 1, 2-6-95.

**Secs. 22-4—22-10. Reserved.****ARTICLE II. OCCUPATION TAXES AND REGULATORY FEES\*****DIVISION 1. GENERALLY****Sec. 22-11. Definitions.**

(a) Wherever the term "City of Kennesaw" is used herein, such term shall be construed to mean "City of Kennesaw, Georgia"; wherever the term "city" is used herein, it shall be construed to mean "City of Kennesaw, Georgia."

**\*Editor's note**—Section 1 of Ord. No. 2001-24, adopted October 1, 2001, repealed in their entirety §§ 22-11—22-45, and enacted new §§ 22-11—22-45 as set out herein. Said former sections pertained to similar subject matter and derived from Ord. of 11-7-94(1), §§ 3-2-11(A)—(D), 3-2-12—3-2-15, 3-2-16(A)—(F), 3-2-17—3-2-22, 3-22(A)—(L), and Ord. No. 1999-16, adopted December 12, 1999. Said ordinance also designated division 2 as §§ 22-29—22-45. Said sections have been redesignated at the discretion of the editor, as §§ 22-31—22-45, to better fit the format of the Code.

(b) Definitions provided in O.C.G.A. § 48-13-5 are incorporated in this article for the benefit of uniformity. The definitions of "business license" and "business registration certificate" have the same intent, with "business registration certificate" being the new and more proper name.

(c) As used in this article, the following terms shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administrative fee* means a component of an occupational tax which approximates the reasonable cost of handling and processing the occupation tax.

*Business* shall mean any corporation, firm, partnership, person (other than an employee), or other business entity who within the corporate limits of the city engages in, causes to be engaged in, or represents himself or herself to be engaged in any occupation or activity with the object of gain, benefit, or advantage either directly or indirectly. Said term shall include independent contractors.

Any person advertising by any means, including but not limited to signs, cards, circulars, newspapers, etc., that he or she is engaged in a business of any kind shall be liable for the appropriate occupation tax required under this chapter 22 and the payment of the approximate amount therefore.

No business required by this Code to secure an occupation tax certificate shall be exempt from the payment of an occupation tax on the grounds that the business is operated for a charitable purpose, unless 80 percent of the proceeds from the business are devoted to that purpose.

*Business license* means a business registration certificate as defined in this section for a business license as defined by ordinances prior to November 7, 1994, adopted by the city council.

*Business registration certificate* means a certificate issued by the business license office evidencing registration of and payment of all required regulatory fees and occupation taxes by persons engaged in business in the city. For the purposes of compliance with other city ordinances referring to a "business license," the term shall be construed to mean a business registration certificate as defined in this section.

*Classifications* are the separate classifications provided for the determination of that part of the occupation tax to be levied as a fixed sum and measured by ranges of taxable gross receipts, the purpose of which is to recognize the ability of businesses to pay as determined by nationwide averages. Tax shall be classified on the entire gross receipts by dominant service or product. Person whose dominant business activity is legally exempted or otherwise limited by city ordinances or by state or federal law from the tax shall be classified according to his/her principal subsidiary business, if any, which is subject to the levy and assessment of an occupation tax.

*Dominant line* means the type of business within a multiple-line business from which the greatest amount of income is derived.

*Employee* means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2, but not a form I.R.S. 1099.

*Engaged in business* means any person who within the incorporated area of the city engages in any activity with the object of profit, gain, benefit or advantage, including but not limited to selling real or personal property or services; leasing or renting real or personal property; sales or services of the character as made by a wholesaler or retailer; or who is involved in any of the functions performed as a manufacturer; or who is involved in the development or construction of real property; the foregoing shall include but is not limited to owner, operator, representative or agent in any business, trade, profession or occupation who represents itself to be engaged in any occupation or activity with the object of gain, benefit or advantage either directly or indirectly.

*Gross receipts* means the total revenue of the business or practitioner for the period, including without limitation the following:

- (1) Total income without deduction for the cost of goods sold or expenses incurred.
- (2) Gain from trading in stocks, bonds, capital assets or instruments of indebtedness.
- (3) Proceeds from commissions on the sale of property, goods or services.
- (4) Proceeds from fees charged for services rendered.
- (5) Proceeds from rent, interest, royalty or dividend income.

The term *gross receipts* shall not include the following:

- (1) Sales, use, or excise taxes;
- (2) Sales returns, allowance and discount;
- (3) Inter-organizational sales or transfers between or among the units of a parent/ subsidiary controlled group of corporations as defined by 26 USC § 1563(a)(1), or between or among the units of brother-sister controlled group of corporations as defined by 26 USC § 1563(a)(2), or between or among wholly owned partnerships or other wholly owned entities;
- (4) Payments made to a subcontractor or an independent agent for services which contributed to the gross receipts in issue;
- (5) Governmental and foundation grants, charitable contributions or the interest income derived from such funds received by a nonprofit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute 80 percent or more of the organization's receipts;
- (6) Proceeds from sales of goods or services which are delivered to or received by customers who are outside the state at the time of delivery or receipt.



*Location of office* includes any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. The renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor. The site of real property which is rented or leased to another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor unless the real property's owner, lessor, or the agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.

*Municipal court* is the court of the City of Kennesaw.

*New business* means any person, enterprise, partnership, corporation or other business entity which is engaged in business in the city who has not previously filed for a business registration certificate.

*Occupation tax* means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, profession or business for revenue raising purposes.

*Person* shall extend and be applied to associations, firms, partnerships and bodies politic and corporate, or any combination thereof, as well as to individuals.

*Practitioner of profession or occupation* is one who by state law requires state licensure regulating such profession or occupation as designated by O.C.G.A. § 48-13-9(c), but shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

*Regulatory fees* means payments, whether designated as license fees, permit fees or by another name, which are required by a local government as an exercise of its police power and as a part of or as an aid to regulation of an occupation, profession or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the city. A regulatory fee may not include an administrative fee or registration fee. An occupation tax may be required in connection with a regulatory fee. Development impact fees as defined by paragraph (8) of O.C.G.A. § 36-71-2 or other costs or conditions of zoning or land development are not regulatory fees.

*Retailer* is a person who sells to the consumer or any other person for any purpose other than for resale in the form of tangible personal property.

*Services* is the accommodating or performing a duty or work by person utilizing time or talents for direct or indirect remuneration.

*Tax year* shall be from January 1<sup>st</sup> to December 31<sup>st</sup>.

*Wholesaler* is a person who sells to jobbers or to another person other than the consumer anything in the form of tangible personal property.

(Ord. No. 2001-24, § 1, 10-1-01)

**Cross reference**—Definitions generally, § 1-2.

**Sec. 22-12. Scope and levy—Businesses with no location in Georgia.**

(a) The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any such profession, trade or calling. The occupation tax only applies to those businesses and occupations which are covered by the provisions of O.C.G.A. §§ 48-13-5 to 48-13-26. All other applicable businesses and occupations are taxed by the local government pursuant to the pertinent general and/or local law and ordinance.

(b) Pursuant to O.C.G.A. §§ 36-1-22 and 48-13-6 et seq. and effective January 1, 1995 and succeeding years thereafter, each person engaged in any business, trade, profession, or occupation in the city, whether with a location in the city, or in the case of an out-of-state business with no location in the state, exerting substantial efforts within the state pursuant to O.C.G.A. § 48-13-7, shall pay an occupation tax for such business, trade, profession, or occupation, which tax and any applicable registration shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent business location in the city, such business tax registration shall be shown to the business license manager or his designees or to any police officer of the city upon his or their request.

(c) Every person required to pay an occupation tax or license fee or a renewal of a license of occupation tax certificate under the provisions of this Code shall submit an application to the supervisor of the business license office, which application shall conform to the requirements of this section in addition to any other provisions of this Code.

(d) Registration and assessment of an occupation tax is imposed on those businesses and practitioners of professions with no location or office in the state if the business's largest dollar volume of business in the state is in the city and the business or practitioner:

- (1) Has one or more employees or agents who exert substantial efforts within the jurisdiction of the city for the purpose of soliciting business or serving customers or clients; or
- (2) If the business or practitioner owns personal or real property which generates income and which is located within the jurisdiction of the city.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-13. Option to establish exemption or reduction in occupation tax.**

The mayor and city council may by subsequent ordinance or resolution provide for an exemption or reduction in occupation tax to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting or

encouraging selected types of business or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious and the reasons shall be set forth in the minutes of the public hearing of mayor and city council. (Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-14. Practitioners exclusively practicing for a government; tax exemption for state or local authority, or nonprofit organization; occupation tax inapplicable where prohibited by law or provided for pursuant to other existing law.**

(a) Any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the state, a municipality or county of the state, shall not be required to obtain a license or pay an occupation tax for that practice.

(b) Tax exempt organizations shall provide a federal tax exempt letter showing the section of the U.S. Code under which exemption is claimed. The city shall not levy an occupation tax, regulatory fee, or administrative fee on any state or local authority or nonprofit organization. Notwithstanding the free registration, such applicants are required to comply with the same laws and regulations as are other registered businesses within the city.

(c) An occupation tax shall not apply to the gross receipts of any part of a business where such levy is prohibited or exempted by the laws of Georgia or of the United States. (Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-15. Businesses not covered by this article.**

The following businesses are not covered by the provisions of this part of the Code but may be assessed any occupation tax or other type of tax pursuant to the provisions of other general laws of the State of Georgia or by local law:

- (1) Those businesses regulated by the Georgia Public Service Commission pursuant to O.C.G.A. Title 46;
- (2) Those electrical service businesses organized under O.C.G.A. Title 46 Chapter 3;
- (3) Any farm operation for the production from or on the land of agricultural products, but not including agribusiness;
- (4) Cooperative marketing associations governed by O.C.G.A. § 2-10-105;
- (5) Insurance companies governed by O.C.G.A. § 33-8-8, et seq.;
- (6) Motor common carriers governed by O.C.G.A. § 46-7-15;
- (7) Those businesses governed by O.C.G.A. § 48-5-355;
- (8) Agricultural products and livestock raised in the State of Georgia governed by O.C.G.A. § 48-5-356;
- (9) Depository financial institutions governed by O.C.G.A. § 48-6-93;
- (10) Facilities operated by a charitable trust governed by O.C.G.A. § 48-13-55;

- (11) Alcoholic beverages;
  - (12) Any other businesses not governed by this part of the Code.
- (Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-16. More than one place or line of business; each line of business to be identified on occupation tax certificate; separate businesses.**

(a) Where a business is operated at more than one place or where the business includes more than one line, the gross receipts of each location shall be entered on a separate occupation tax return and each different line of business shall be identified on a form to be furnished by the business license and revenue division.

(b) The business registration of each business operated in the city shall identify the line or lines of business that the business conducts. No business shall conduct any line of business without first having that line of business registered with the business license and revenue division and that line of business being noted by the business license and revenue division upon the occupation tax certificate which is to be displayed by the business owner.

(c) Where a person conducts a business at more than one store, location or place, each store, location or place shall be considered a separate business under the terms of this chapter and a separate tax shall be required. Should more than one business on which an occupation tax is levied by this Code be conducted in or in conjunction with one place or kind of business, each business shall be separately licensed under this chapter.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-17. Basis for fees; classification of business; administrative and regulatory fee structure.**

(a) An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one or more locations or offices within the corporate limits of the city or upon the applicable out-of-state businesses with no location or office in Georgia pursuant to O.C.G.A. § 48-13-7 based on the following criteria:

- (1) Gross receipts of the business or practitioner in combination with the profitability ratio for the type of business, profession, or occupation as measured by nationwide averages derived from statistics, classifications, or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service, or successor agencies of the United States.
- (2) Ranking the classification codes according to nationwide averages of profitability ratios which will be updated from time to time by the city.
- (3) Determining the profit class, tax class, and tax rate on gross receipts for each business, trade, profession or occupation as indicated in schedule A attached hereto and made a part herein by reference which will be updated from time to time by the city. The schedule of fees shall be as approved and adopted and may be amended in the future

by the city council. The schedule of fees, including those that pertain to all sections of this article, shall be on file and available in the city clerk's office and/or the business license office.

(b) A nonprorated, nonrefundable administrative fee of \$55.00 shall be required on all occupation tax accounts for the initial start-up, renewal, or reopening of those accounts.

(c) A nonprorated regulatory fee will be imposed as permitted under O.C.G.A. § 48-13-9 on those applicable businesses. A regulatory fee may not include an administrative fee.

(d) Each application shall contain the following information:

- (1) Name and home address of the applicant if an individual, or home office address if a corporation or partnership;
- (2) Address where the proposed business is to be located;
- (3) Kind and class of business to be conducted;
- (4) Current classification code, taxable gross revenues for the preceding 12 calendar months, and number of employees;
- (5) Any information as may be required by the supervisor of the business license office for the purpose of determining the amount of any occupation taxes to be collected under this Code; and
- (6) Any additional information which the supervisor of the business license office may find reasonably necessary for the fair administration of this part of the Code which may include a complete record of all arrests and convictions against the applicant and every partner, officer, director or stockholder of the applicant or spouses, children or parents thereof for violations of any and all laws and ordinances of the city, state or federal government other than minor traffic violations.

(b) Each application shall be signed and sworn to by the applicant if an individual, or by a partner if a partnership, or by an officer if a corporation.

(c) False statements on any application for a license or occupation tax certificate shall be grounds for immediate revocation of the license or occupation tax certificate or denial of the application.

(Ord. No. 2001-24, § 1, 10-1-01)

#### **Sec. 22-18. Review and approval or denial of applications.**

(a) If any provision of this part of the Code provides for the review and approval of an application for a license or occupation tax certificate by the business license manager designated therein, the business license manager shall act, favorably or otherwise, on the application as required by this Code.

(b) The granting of a business license or occupation tax certificate under any provisions of this Code shall be deemed a privilege only, and nothing herein contained shall be construed as granting any person whose business is subject to municipal regulation any legal right to engage in that business.

(c) An application for a business registration certificate shall be complete at the discretion of the business license manager. Once the business license manager deems an application to be complete for purpose of processing, the business license manager shall either deny the application or grant the certificate no later than ninety days after the date the application became complete for purposes of processing.

(d) Except as hereafter provided, upon the decision of the business license manager or his designee to approve or deny a license under this chapter, such decision being in writing and including notice of the decision and notice of the appeal procedures to the mayor and city council as provided hereafter, the applicant or any aggrieved citizen may appeal the decision of the business license manager to the mayor and council by filing a written notice of appeal with the city clerk within five calendar days of the decision by the business license manager or his designee. Every appeal shall be in writing and identify the basis for such appeal and upon receipt of the appeal, the city clerk shall forward same to the city council which shall schedule a hearing within 45 days of receipt of such notice. The city council may sustain or overrule the decision of the business license manager. No license shall be issued by the business license manager or designee during the appeal notification period or while an appeal is pending before the city council. The action of the mayor and council shall be final and may be appealed to superior court in accordance with Georgia law.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-19. Allocation of gross receipts of business with multiple intra or interstate locations.**

For those businesses who have multiple locations inside and outside of the city where the gross receipts can be allocated to each location, the gross receipts used to determine the occupation tax assessed will be those gross receipts attributed to each city location. In the case where the dollar amount of gross receipts attributed locally cannot be determined in those businesses with multiple locations, the total gross receipts will be divided by the total number of locations in the city and elsewhere and allotted to those locations pursuant to O.C.G.A. § 48-13-14(a)(2). Upon request the business or practitioner with a location or office situated in more than one jurisdiction shall provide the city the following:

- (1) Financial information necessary to allocate the gross receipts of the business or practitioner;
- (2) Information relating to the allocation of the business' or practitioner's gross receipts by other local governments.

Where the business has locations outside of the city and taxation is levied for a criteria other than gross receipts in the other local governments, the city shall not assess more than the allotted share of gross receipts for the local operation.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-20. Occupation taxes levied on business to be transacted during calendar year; filing of returns showing gross receipts during preceding calendar year; procedure where taxes overpaid or underpaid.**

(a) All occupation taxes levied by this article are levied on the amount of business to be transacted during the calendar year. However, for the convenience of both the city and the taxpayer, and the necessity of making numerous returns, those businesses subject to the occupation tax levied in section 22-12 shall, on or before the times set forth in this section, file with the business license manager the returns specifically provided for, showing the gross receipts of that business during the preceding calendar year. This return shall be used as an estimate for making payments on the occupation tax for the current calendar year. The actual and final amount of tax levied for business transacted in a current calendar year shall be paid in accordance with a final return to be made after the termination of the year, in accordance with the procedure hereinafter set forth.

(b) The owner, proprietor, manager or secretary officer of the business subject to said occupation tax of the current calendar year shall, at the end of the preceding year, or by March 31<sup>st</sup> of the current calendar year, file with the business license manager or the city, on a form furnished by said revenue collection officer, a signed return setting forth the amount of gross receipts of such business for the entire preceding calendar year, to be used as an estimate of the gross receipts for the current year.

(c) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year.

(d) If the amount of the occupation tax for the preceding year based on the return provided for in this section and on the rate of the tax provided for in this Code, exceeds the amount of occupation tax theretofore paid by the business based on the estimate filed pursuant to section 22-20(a), the difference in said amount shall be due and payable by the taxpayer to the city by March 31<sup>st</sup> of the current year and delinquent if not paid on or before such date.

(e) If the amount of the occupation tax for the preceding year based on the return provided for in this Code, is less than the amount of occupation tax theretofore paid by the business based on the estimate filed pursuant to section 22-20(a), the difference in such amount shall be refundable by the city to the taxpayer; or, if such business continues to be conducted in the city during the current year, such difference in amount may be credited by the city on the

amount of occupation tax to be paid to the city by such business for the current year. This election is to be taken by the taxpayer and shall be submitted in writing to the business license manager.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-21. Professionals as classified in O.C.G.A. § 48-13-9(c), paragraphs 1 through 22.**

Practitioners of professions and occupations as described in O.C.G.A. § 48-13-9(c)(1) through (22) shall elect as their entire occupation tax one of the following:

(a) The occupation tax bases on gross receipts combined with profitability ratios as set forth in section 22-17.

(b) A fee of \$400.00 per practitioner who is licensed to provide the service, such tax to be paid for the practitioner's office or location; provided, however, that a practitioner paying according to this paragraph shall not be required to provide information to the local government relating to the gross receipts of the business or practitioner. The per-practitioner fee applies to each person in the business who qualifies as a practitioner under the state's regulatory guidelines and framework.

(c) This election is to be made on an annual basis and must be done by January 1 of each year.

(d) It being the intention of the city council that no portion of the taxation scheme in this article be construed to be, or have the practical effect of, regulation of or a precondition on the practice of law, or other state regulated professions, if any provision of this article shall be construed by a court of competent jurisdiction to be unlawful regulation of such professions, then such provision shall be considered rescinded by the city council as if such provision had not been adopted, and in such case, the remaining provisions of this article shall be applied to such practitioner.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-22. Temporary use certificates.**

(a) Any person intending to utilize property for a temporary use must first obtain from the mayor and council a temporary use certificate. The requirements for obtaining a temporary use certificate are as follows:

- (1) Temporary use must be a permitted use under the existing zoning classification; and
- (2) The applicant must submit the request for a temporary use certificate on forms provided by the business license officer; and
- (3) The applicant must submit a letter signed and notarized by the property owner granting express permission and consent to use the property for such temporary use; and



(4) The applicant must submit a drawing, sketch or plat of the property showing all intersections, parking, zoning, existing structures and location of such temporary use;

(5) The applicant shall submit a regulatory fee of \$100.00

(b) The mayor and council may issue a temporary use certificate, at its sole discretion; and in their discretion may take into consideration the affect that the temporary use would have on the public safety as well as the aesthetics of surrounding areas.

The certificate may be issued for a period of time not to exceed 30 days and no extensions will be granted.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-23. Penalty of ordinance violation.**

Any person violating any provisions of this part of the Code shall, upon order of the municipal judge, be subject to a civil penalty in an amount not to exceed \$500.00, in the discretion of the municipal judge. There shall be no criminal penalty imposed hereunder.

(Ord. No. 2001-24, § 1, 10-1-01)

**Secs. 22-24—22-30. Reserved**

**DIVISION 2. ADMINISTRATION AND ENFORCEMENT**

**Sec. 22-31. Responsibility for enforcement; administration of chapter; appeals.**

(a) The business license manager shall administer and enforce the provisions of this chapter for the levy, assessment and collection of occupation taxes and penalties imposes herein.

(b) It is made the duty of the business license manager and police department to see that the provisions of this part of the code relating to occupation taxes are observed; and to summon all violators of the same to appear before the municipal court. It is made the further duty of the business license manager, members of the police department, and their assistants, to inspect all registrations issued by the city, as often as in their judgment it may seem necessary to determine whether the registration held is proper for the business sought to be transacted thereunder.

(c) Under the direction of the business license manager, one or more city employees designated by the business license manager shall seek out violations of the City Code, particularly the taxing and regulation portions thereof.

(d) Any person aggrieved by any action of the business license manager or his designees in the enforcement of this chapter 22 of the Code or rules and regulation adopted pursuant to this chapter 22 of the Code, including grievances over the amount of taxes assessed and classification of the business, may be appealed by the person as follows:

(1) The aggrieved person shall first submit in writing to the business license manager a complaint which sets forth in reasonable detail the matters complained of. The

complaint may take a letter form and it shall be the duty of the business license manager to review it and to issue a written reply stating the business license manager's position and opinion to the aggrieved person within 30 days from the receipt of the complaint. Such written reply shall include notice of the appeal procedures to the mayor and city council as provided hereafter.

- (2) An appeal of the business license manager's decision in the enforcement of this section by the aggrieved person to the city council shall be allowed and perfected by filing with the city clerk a notice of appeal for scheduling on the city council agenda. The notice of appeal shall state in general terms the objections or exceptions taken to the action and opinion of the business license manager. The notice of appeal must be filed with the city clerk within 15 days following the date of the decision in subsection (d)(1) above complained of and it shall be the duty of the business license manager upon receipt thereof to transmit to the city clerk all the papers constituting the record upon which the action appealed from was taken. Thereafter, it shall be the duty of the city clerk to place the appeal upon the agenda of the city council meeting no later than 45 days after the date of appeal. Moreover, it shall be the duty of the city clerk to so notify the appellant in writing of the date, time and place when the matter shall be heard.
- (3) The city council may, in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the opinion, requirement, decision or determination appealed from, and to that end shall have all the powers of the business license manager. The city council may direct any action as it may deem proper in conformity with this article and it shall be the duty of the business license manager to carry out the decisions of the city council in conformity with this chapter.
- (4) An appeal under this section shall stay all legal proceedings with regard to the collection of the occupation tax and penalties from the appellant. The appellant shall have the right to present before the city council for their consideration any duly sworn witnesses or other evidence at the time such matter appealed from is heard. In the event the business license manager fails to render a written opinion to the aggrieved person within the 30 days as required above, the aggrieved person shall, if desired, appeal to the city council within the time limit state above as if the business license manager had rendered an adverse opinion with regard to the complaint.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-32. Duties of business license manager, generally; food establishments; zoning.**

- (a) The business license manager shall have, among other, the following duties.
  - (1) To prepare and provide the necessary forms for the registration and application for a business license and for the submission of any required information as may be necessary to properly administer and enforce the provisions of this chapter.
  - (2) To issue to each person a business license or occupation tax certificate within a reasonable time after the payment of the license fee or occupation tax assessed and any

personal property or other city taxes levied in this Code; provided however, where under other portions of this Code, permits, certifications, and compliance with enumerated conditions are required for the operation of the business, the business license manager shall not issue a business license or occupation tax certificate until the applicant exhibits to the city manager the obtained permits, certification, and compliance.

(b) The business license manager shall not issue any city license or occupation tax certificate for a restaurant, lunch wagon or other food preparation establishment unless a copy of a valid certificate issued by the county health department for the operation of the business has been filed with the business license manager by the applicant.

(c) The business license manager shall not issue any city license or occupation tax certificate for any business unless city personnel charged with the enforcement of the city's zoning regulations certify to the city manager's satisfaction that the applicant's proposed location is not in violation of the city's zoning regulations.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-33. When occupation tax due and payable; effect of transacting business when tax delinquent; when renewal registration and tax due and payable; effect of transacting business when tax delinquent.**

(a) Each such occupation tax shall be for the calendar year 1996 and succeeding calendar years thereafter unless otherwise specifically provided. The registration and occupation tax shall accrue on January 1 of each year and shall be due and payable no later than March 31 of each year, and be subject to a ten percent penalty plus one and one-half percent interest per month for delinquency. On any new professions, trades or callings begun in the city in 1996 or succeeding years thereafter, the registration shall be submitted and occupation taxes shall be paid within 30 days upon beginning business. If said registration is not submitted and occupation taxes are not paid within 30 days upon beginning business, a ten percent penalty per year plus one and one-half percent interest per month from the date the tax first became delinquent. For the purposes of this chapter any portion of a month shall be considered to be one month. The tax registration or occupation tax certificate herein provided for shall be issued by the business license manager.

(b) Any business license or occupation tax certificate referred to in this part of the Code shall automatically expire on December 31<sup>st</sup> of the year of its issuance unless otherwise provided.

(c) If a business continues to transact or offer to transact in the city any of the kind of profession, trade or calling subject to this Code after notification by the office of the business license and revenue division that such registration tax or penalties are due, and if such registration, tax or penalties are not submitted as directed by the office of the business license and revenue division, then said business or its representative shall be subject to a citation.

Such offender shall, upon conviction by the municipal judge, pay all fees and occupation taxes due and be subject to a civil fine not to exceed \$500.00, which may be enforced by the contempt power of the municipal court.

(d) In addition to the above remedies, the business license manager may proceed to collect in the same manner as provided by law for tax executions.

(e) The administrator may collect any delinquent business license or occupation taxes due the city for a period not to exceed seven years from the date such first became delinquent. (Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-34. Inspections of books and records.**

(a) In any case the business license manager of the city, or his or her designee, may inspect the books of the business or profession for which the returns are made and such books or records for the business of which the return was made in the city shall be submitted for inspection by the office of the business license and revenue division of the city within 30 days. Failure of submission of such books or records within 30 days shall be grounds for revocation of the tax certificate currently existing to do business in the city. Adequate records shall be kept in the city for the examination by the business license manager at his or her discretion. If, after examination of the books or records, it is determined that a deficiency occurs as a result of the under reporting, interest will be assessed for the period delinquent. If, after subsequent examinations of the books or records, it is determined that a deficiency occurs as a result of under-reporting, then a penalty of ten percent and interest shall be assessed as per O.C.G.A. § 48-2-40.

(b) In the event of a suspension or revocation by the supervisor of the business license office, the applicant may appeal the decision of the supervisor of the business license office to the mayor and city council for the city by filing a written notice of appeal within ten days from the date of the decision of the business license manager. Thereafter, a hearing shall be scheduled before the mayor and city council for the city within 45 days after the date of the notice of appeal by the applicant. After hearing by the mayor and city council, city council may take such action as it deems appropriate, including the upholding of the action of the business license manager or the imposition of such action as the mayor and city council may deem appropriate under the facts. The decision of mayor and city council shall be final. Appeals from the decision of the mayor and city council shall be to the Superior Court of Cobb County filed within 30 days to the final action of mayor and city council. In the event the applicant does not file an appeal from any decision of the business license manager, as provided herein, the decision of the business license manager shall be final.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-35. Business or landlord required to provide names and addresses of tenant businesses.**

Every person required to pay an occupation tax or license fee or a renewal of a license or occupation tax certificate under the provisions of this Code who leases or rents space to

another business or businesses operating within the city shall submit a list of such businesses, upon request of the business license manager, to the city as referenced in section 22-34 of the City Code.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-36. Returns confidential.**

Except as provided in O.C.G.A. § 48-13-15(c), as amended, it shall be unlawful for any officer, employee, agent or clerk of the City of Kennesaw or any other person to divulge or make known in any manner the amount of gross receipts or any particulars set forth or disclosed in any occupation tax return required under this chapter. All contents of the return shall be confidential and open only to the officials, employees, agents or clerks of the city using said returns for the purpose of this occupation tax levy and the collection of the tax. Independent auditors or bookkeepers employed by the city shall be classed as employees. Nothing herein shall be construed to prohibit the publication by city officials of statistics, so classified as to prevent the identification of particular reports or returns and items thereof; or the inspection of the records by duly qualified employees of the tax departments of the State of Georgia or the United States, and other local governments.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-37. Change of location; fee; taxes not transferable.**

(a) Change of location and/or name fee. Any person or practitioner of profession or occupation taxable under this Code moving from one location to another shall notify the business license manager of the move and the new address in writing on a form provided by the business license manager no later than the day of moving and shall pay a ten-dollar fee.

(b) Any person or practitioner of profession or occupation taxable under this Code changing its business name from one name to another shall notify the business license manager of the name change in writing on a form provided by the business license manager no later than the day of the proposed name change and shall pay a ten-dollar fee.

(c) The transfer of ownership of a business license or occupation tax certificate shall be considered in the same manner as the termination of the business and the establishment of a new business. In the event that the owner of a business license or occupation tax certificate desires to transfer the same, or in the event that any interest in the business for which the license or certificate was issued is sold or otherwise transferred, then the purchaser or transferee of such license or tax certificate shall apply to the city as for an original license or tax certificate on or before the date on which such sale or transfer is made. Ownership of such business license or tax certificate shall remain unchanged until the application of such purchaser or transferee is approved by the city and all proper fees and taxes are paid. Notwithstanding the foregoing, in the case of a corporation, a new license or tax certificate shall not be required as herein provided unless a change in stock ownership in the corporation

results in ownership of more than 50 percent of the outstanding corporate stock, voting or otherwise, by persons or combinations of persons not owners of such stock at the time the license or tax certificate was issued.

(d) In case of the death of any natural person holding a city business license or occupation tax certificate, or any interest therein, the license or certificate may be transferred to the administrator, executor of the lawful heir or devisee of the deceased person by filing a new application with the city for the change of ownership within 30 days of such death. The business involved may continue to operate until disposition of the application is determined as for an original license or certificate. No additional fees or occupation taxes shall be charged above what would be due if the business, or portion thereof, remained under the deceased person's ownership.

(e) The change of ownership of a business shall not affect the distance requirements previously approved by the city.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-38. Display of licenses and registrations; evidence of state registration required if applicable; state registration to be displayed; city registration effective; evidence of qualification if applicable.**

(a) All persons shall exhibit and display all licenses and registrations issued to them under this Code in some conspicuous place in their business establishment at which address the license or registration was issued. Any nonresident person, firm or corporation doing business within the city shall carry the license or registration, or a copy of the license or registration, issued by another jurisdiction either upon his or her person or in any vehicle or other conveyance which is used in the business and the person shall exhibit the same to any authorized enforcement officer of the city when so requested.

(b) Each person who is licensed by the secretary of state pursuant to O.C.G.A. Title 43 shall provide evidence of proper and current state licensure before the city registration may be issued.

(c) Each person who is licensed by the state shall post the state license in a conspicuous place in the licensee's place of business and shall keep the license there at all times while the license remains valid.

(d) No city registration shall become effective until each person or business who is required to obtain a license from the State of Georgia has registered with the state and is in good standing with the state or has received such license.

(e) Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of a city business registration, show evidence of such qualification.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-39. Revocation and appeal.**

(a) The supervisor of the business license office shall be authorized to suspend or revoke a business registration certificate in accordance with the procedures set forth below. In the event the supervisor of the business license office seeks to suspend or revoke an occupation tax certificate, the supervisor of the business license office shall give written notification to the applicant of such action and such notice shall contain a specification of the violation or violations and shall be served upon the licensee at least five days prior to the hearing. The applicant shall be given written notice of the time and place of the hearing.

(b) The supervisor of the business license office shall be authorized to deny, suspend or revoke an occupation tax certificate in the event of any one or more of the following:

- (1) An applicant gave false or misleading information in the original or renewal application process;
- (2) An applicant has knowingly allowed possession, use, or sale of controlled substances on the premises and/or knowingly allowed possession, use or sale of controlled substances to a minor on the premises;
- (3) An applicant has knowingly allowed the violation of an ordinance of the city or a violation of any criminal law of the State of Georgia (a misdemeanor or a felony) to occur on the premises; and that such violation is materially related to the operation of said business;
- (4) An applicant (or licensee) has been convicted of any drug related, alcohol-related or sex-related crime by the State of Georgia or the city regarding an offense which was committed on the premises or which would otherwise violate the provisions of this chapter;
- (5) An applicant fails to pay any fee, occupation tax, fine or other amount of money due to the city under this chapter or any other taxing ordinance of the city; and
- (6) An applicant or the owner alters or allows to be altered, the business license occupation tax certificate (license document) or the applicant or the owner changes the information, defaces, destroys, misuses, abuses, or improperly alters or misrepresents the business license or occupation tax certificate.

(c) The city manager shall approve any proposed action prior to proceeding toward any suspension or revocation of any occupation tax certificate and/or business license.

(d) In the event the supervisor of the business license office shall suspend or revoke any occupation tax certificate hereunder, the suspension or revocation shall be for a period of not less than one day nor more than 365 days, within the discretion of the supervisor of the business license office. Any suspension or revocation shall be sent by the city by certified mail, return receipt requested. For the first offense, the suspension shall be for a period of one to 90 days; second offense, suspension for one to 180 days and third offense, suspension for one to 365 days. Provided, however, that the applicant shall be authorized to continue its business operations until that date of the hearing scheduled in accordance with subsection (e) of this

section. No applicant may apply for an occupation tax certificate during any period of suspension or revocation. In any hearing conducted, the supervisor of the business license office shall consider, among other things, the severity of the allegations, the evidence submitted and the testimony presented, in making any decision on suspension or revocation and the duration of either.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-40. Lien taken for delinquent occupation tax.**

In addition to the other remedies provided for the collection of the occupation tax herein levied, the business license manager of the city, upon any tax or installment of said tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of said tax against the person, partnership, or corporation liable for said tax, which said execution shall bear interest at the rate of 1½ percent per month from the date when such tax or installment becomes delinquent, and the lien shall cover the property in the city of the person, partnership or corporation liable for said tax all as provided by the ordinances and Charter of said city and the laws of Georgia. The lien of said occupation tax shall become fixed on and date from the time when such tax or any installment thereof becomes delinquent. The execution shall be levied by the sheriff's department of Cobb County upon the property of defendant located in said city, and sufficient property shall be advertised and sold to pay the amount of said execution with interest and costs. All other proceedings in relation thereto shall be had as it is provided by ordinances and charter of said city and the laws of Georgia, and the defendant in said execution shall have rights of defense, by affidavit of illegality and otherwise, which are provided by the Charter of said city and the laws of Georgia in regard to tax executions. When a nulla bona entry has been entered by proper authority upon an execution issued by the city clerk against any person defaulting on the occupation tax, the person against whom the entry was made shall not be allowed or entitled to have or collect any fees or charges whatsoever for services rendered after the entry of the nulla bona. If, at any time after the entry of nulla bona has been made, the person against whom the execution is issued pays the tax in full together with all interest and costs accrued on the tax, the person may collect any fees and charges due him or her as though he or she had never defaulted in the payment of taxes.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-41. Amendment; repeal of provision; applications of provisions to prior ordinance.**

(a) The ordinance codified as chapter 22 of this Code shall be subject to amendment or repeal, in whole or in part, at any time and no such amendment or repeal shall be construed to deny the right of council to assess and collect any of the taxes or other charges prescribed. Such amendment may increase or lower the amounts and tax rates of any occupation and may change the classification thereof. The payment of any occupation tax provided for shall not be



construed as prohibiting the levy or collection by the city of additional occupation taxes upon the same person, property, or business. No tax may be implemented hereunder prior to the date of its adoption and no tax may be retroactively assessed or collected.

(b) The ordinance codified as chapter 22 of this Code does not repeal or affect the force of any part of any ordinance heretofore passed where taxes levied under such prior ordinance have not been paid in full. So much and such parts of ordinances heretofore and hereinafter passed as provided for the issuing and enforcing of execution for any tax or assessment required by such ordinances, or that imposed fines or penalties for the nonpayment of such tax, or for failure to pay regulatory fees provided for in said ordinance or ordinances, or failure to comply with any other provisions hereof, shall continue and remain in force until such tax, regulatory fee or assessment shall be fully paid.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-42. Requirement of public hearing before tax increase.**

(a) After April 11, 1995, the city shall conduct at least one public hearing before adopting any ordinance or resolution regarding the occupation tax.

(b) In any year when revenue from occupation taxes is greater than revenue from occupation taxes for the preceding year, the City of Kennesaw shall hold at least one public hearing as part of the process of determining how to use the additional revenue.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-43. Conflicts between specific and general provisions; severability; saving clause; repeal of conflicting provisions.**

(a) Where there is an apparent conflict in the ordinance codified as chapter 22 of this Code between specific and general provisions, it is the intention hereof that the specific shall control.

(b) If any section, provision or clause of any part of the ordinance codified as chapter 22 of this Code shall be declared invalid or unconstitutional, or if the provisions of any part of the ordinance codified as chapter 22 of this Code as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to effect the portions of the ordinance codified as chapter 22 of this Code not so held to be invalid, or the application of the ordinance codified as chapter 22 of this Code to other circumstances not so held to be invalid. It is hereby declared as the intent that the ordinance codified as chapter 22 of this Code would have been adopted had such invalid portion not been included herein.

(c) The ordinance codified as chapter 22 of this Code does not repeal or affect the force of any part of any ordinance not included herein which shall remain in full force and effect until changed by amendment and adopted by mayor and city council. Nothing contained herein shall prevent or prohibit the city or any court or any board or authority of the city from enforcing any

previous tax or obligation (including penalties and/or interest) incurred prior to the effective date of this Code. Any such enforcement of the prior Code is hereby authorized to continue after the effective date hereof.

(Ord. No. 2001-24, § 1, 10-1-01)

**Sec. 22-44. Annexation incentive.**

As an incentive for occupations, businesses, and industries located adjacent to the corporate limits of the city to annex into the city, the following provisions shall apply:

- (1) Occupations, businesses and industries located in areas annexed to the city, otherwise subject to the requirements of this article, shall be exempt from the requirements of this article for a period of five years from the effective date of the annexation.
- (2) Occupations, businesses and industries located in areas annexed to the city, otherwise subject to the requirements of this article, shall be required to comply with the requirements of this article after the initial five-year exemption period outlined in subsection (1) above and shall pay occupation and business license fees to the city based on the following schedule:
  - a. Year six after the effective date of annexation—20 percent of the occupation or business license fee otherwise due.
  - b. Year seven after the effective date of annexation—40 percent of the occupation or business license fee otherwise due.
  - c. Year eight after the effective date of annexation—60 percent of the occupation or business license fee otherwise due.
  - d. Year nine after the effective date of annexation—80 percent of the occupation or business license fee otherwise due.
  - e. Year ten after the effective date of annexation—100 percent of the occupation or business license fee otherwise due.

The incentives outlined in this section shall apply only to businesses in existence within the annexation area upon the effective date of the annexation or established within 12 months after the effective date of the annexation.

(Ord. No. 2002-18, § 1, 6-3-02)

**Editor's note**—Ord. No. 2002-18, § 1, adopted June 3, 2002, enacted a new § 22-42. The newly enacted § 22-42, pertaining to annexation incentive, has been renumbered as set out herein at the discretion of the editor to preserve the style of the Code.

**ARTICLE III. BAIL BONDSMEN\*****DIVISION 1. GENERALLY****Sec. 22-46. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bondsmen, professional or surety* means any persons who hold themselves out as signers or sureties of bail bonds for compensation, and who are licensed as provided in this article.

(Code 1986, § 9-4-1; Ord. No. 2000-19, 9-19-00)

**Cross reference**—Definitions generally, § 1-2.

**Sec. 22-47. Persons prohibited from signing bonds.**

No attorney at law and no official authorized to admit to bail, nor any city or county official, shall become surety on any bond.

(Code 1986, § 9-4-6; Ord. No. 2000-19, 9-19-00)

**Sec. 22-48. Fees of sureties.**

(a) Sureties on criminal bonds in any court shall not, when receiving compensation, charge or receive more than 12 percent of the principal amount of bonds set in the amount of \$10,000.00 or less and shall not charge or receive more than 15 percent of the principal amount of bonds set in an amount in excess of \$10,000.00 as compensation from defendants or from anyone acting for defendants.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

(Code 1986, § 9-4-7; Ord. of 6-19-89(2); Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

**State law reference**—O.C.G.A. § 17-6-30

**Sec. 22-49. Additional compensation prohibited.**

No professional bondsman, becoming surety on a bond and receiving the compensation in the case for signing such bond as surety, shall thereafter receive any other sum in the case to the final disposition of such case.

(Code 1986, § 9-4-8; Ord. No. 2000-19, 9-19-00)

**Sec. 22-50. Prenumbered receipt as evidence of payment.**

(a) All professional bondsmen engaged in the bail bond business who accept money or any other consideration for any bail bond which they execute must, for payment received, give to the person paying the money or giving the consideration a prenumbered receipt as evidence of

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\***State law references**—Persons deemed professional bondsmen, O.C.G.A. § 17-6-50; certain persons prohibited from engaging in bail bond business, O.C.G.A. § 45-11-8.

payment, which receipt shall state the date, name of the principal, amount of money or consideration received and purpose for which received, number of the power of attorney form attached to the bond, penal sum of the bond (amount of cash bond), and name of person making payment or giving consideration.

(b) All professional bondsmen must retain a duplicate copy of each receipt issued as part of their records.

(Code 1986, § 9-4-9; Ord. No. 2000-19, 9-19-00)

**Sec. 22-51. Power of attorney.**

All professional bondsmen must attach to each bail bond a duly executed power of attorney in an amount of at least the penal sum of the bond. This section shall not apply to any card or certificate of membership of any automobile club.

(Code 1986, § 9-4-10; Ord. No. 2000-19, 9-19-00)

**Sec. 22-52. Bondsmen to have equal access to jail.**

All professional bondsmen who hold a currently effective license issued by the business license supervisor shall be entitled to equal access to the jail of this city for the purpose of making bond.

(Code 1986, § 9-4-11; Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

**Sec. 22-53. Unlawful inducements for benefit of bondsman; unlawful execution of bond.**

No professional bondsman shall:

- (1) Pay a fee or rebate or give or promise anything of value to a jailor, police officer, peace officer, municipal court judge or any other person who has power to arrest or to hold in custody; or to any city official or city employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond.
- (2) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond.
- (3) Pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf.
- (4) Sign or countersign in blank any bond, or give a power of attorney to, or otherwise authorize anyone to countersign his name to bonds unless the person so authorized is directly employed by the bondsman giving such power of attorney.

(Code 1986, § 9-4-12; Ord. No. 2000-19, 9-19-00)

**Sec. 22-54. Display of signs.**

(a) Each professional bondsman duly licensed by the city shall be allowed to display a sign of his own making or choosing in a place designated by the chief of police at or near the book-in, book-out section of the city jail.

(b) Two signs per licensed bondman shall be permitted and shall be limited to lettering and numbering of no more than three inches high and one and one-half inches in width for each letter or numeral.

(c) Signs shall be limited to two lines to allow the name of the business licensed under this article at the top and the phone number at the bottom.

(d) The overall dimensions of the said signs shall be limited to four inches in height and 12 inches in width.

(Code 1986, § 9-4-13; Ord. of 6-19-89(2); Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

#### **Sec. 22-55. Conditions of bond.**

If a person is admitted to bail for his appearance in municipal court, the condition of the bail bond shall be that he will appear for such hearing, at the time and date specified on the copy of charges, to answer the charge, and will submit himself to the orders and processes of the municipal court judge trying the case and will not depart without leave of the municipal court judge.

(Code 1986, § 9-4-21; Ord. No. 2000-19, 9-19-00)

#### **Sec. 22-56. Forfeiture of bond; surrender of custody of defendant; procedure.**

(a) The clerk of the court shall give the surety on all appearance bonds at least 72 hours written notice, exclusive of Saturdays, Sundays, and legal holidays, before the time of the required appearance of the principal. Such notice shall not be necessary if the time for appearance is within 72 hours from the time of arrest, provided the time for appearance is stated on the bond, or where the principal is given actual notice in open court.

(b) On the date required for appearance of the principal, the presiding municipal judge or designee shall call the case, and, if the accused is not in court and does not answer the call, and, if no good and sufficient reason is given for non-appearance, the judge shall, at the end of the court day, upon the failure of the principal to appear, enter on the docket where the case is stated "bond forfeited" or similar words thereby forfeiting the bond and order an execution hearing not sooner than 120 days but later than 150 days after such failure to appear. Notice of the execution hearing shall be served within ten days of such failure to appear by certified mail or statutory overnight delivery to the surety at the address listed on the bond or by personal service to the surety within ten days of such failure to appear at its home or office or to its designated registered agent. Service shall be considered complete upon the mailing of such certified notice.

(c) If at the execution hearing it is determined that judgment should be entered, the judge shall so order and a writ of fieri facis shall be filed in the office of the clerk of the court where such judgment is entered.

(Code 1986, § 9-4-22; Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

**Cross references**—O.C.G.A. § 17-6-70(b); O.C.G.A. § 17-6-71(a); O.C.G.A. § 17-6-71(b).

**State law reference**—O.C.G.A. § 17-6-71(a).

**Sec. 22-57. Conditions not warranting forfeiture of bond for failure to appear; remission of forfeiture.**

(a) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court by the written statement of a licensed physician that the principal on the bond was prevented from attending by some mental or physical disability.

(b) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court that the principal on the bond was prevented from attending because he or she was detained by reason of arrest, sentence, or confinement in a penal institution or jail in the State of Georgia, or so detained in another jurisdiction, or because he or she was involuntarily confined or detained pursuant to court order in a mental institution in the State of Georgia or another jurisdiction. An official written notice of the holding institution in which the principal is being detained or confined shall be considered proof of the principal's detention or confinement and such notice may be sent from the holding institution by mail or delivered by hand or by facsimile machine. Upon the presentation of such written notice to clerk of the proper court, the prosecuting attorney, and the sheriff or other law enforcement officer having jurisdiction over the case, along with a letter of intent to pay all costs of returning the principal to the jurisdiction of court, such notice and letter shall serve as the surety's request for a detainer or hold to be placed upon the principal. Should there be a failure to place a detainer or hold within 15 days, excluding Saturdays, Sundays, and legal holidays, and after such presentation of such notice and letter of intent to pay costs, the surety shall then be relieved of liability for the appearance bond without further order of the court.

(c) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court that prior to the entry of the judgment on the forfeiture the principal on the bond is in the custody of the sheriff or other responsible law enforcement agency. An official written notice of the holding institution in which the principal is being detained or confined shall be proof of the principal's detention or confinement and such notice may be sent from the holding institution by mail or delivered by hand or by facsimile machine. Upon presentation of such written notice to the clerk of the proper court, the prosecuting attorney, and the sheriff or other law enforcement officer having jurisdiction over the case along with a letter of intent to pay all of the costs of returning the principal to the jurisdiction of the court, such notice and letter shall serve as the surety's request for a detainer or hold to be placed upon the principal. Should there be a failure to place a detainer or hold within 15 days, excluding Saturdays, Sundays, and legal holidays, and after such presentation of such notice and letter of intent to pay costs, the surety shall then be relieved of liability for the appearance bond without further order of the court.

(d) In cases in which paragraph (3) of this subsection is not applicable, on application filed within 120 days from the payment of the judgment, the court shall order remission under the following conditions:

- (1) Provided the bond amount has been paid within 120 days after judgment and the delay has not prevented prosecution of the principal and upon application to the court with prior notice to the prosecuting attorney of such application, said court shall direct

remission of 95 percent of the bond amount remitted to the surety if the surety located the principal in the custody of the sheriff in the jurisdiction where the bond was made, apprehends, surrenders, or produces the principal, if the apprehension or surrender of the principal was substantially procured or caused by the surety, or if the location of the principal caused the adjudication of the principal in the jurisdiction where the bond was made. Should the surety, within two years of the principal's failure to appear, locate the principal in the custody of the sheriff in the jurisdiction where the bond was made or another jurisdiction causing the return of the principal to the jurisdiction where the bond was made or in another jurisdiction causing the return of the principal to the jurisdiction where the bond was made, apprehend, surrender, or produce the principal, if the apprehension or surrender of the principal is substantially procured or caused by the surety, or if the location of the principal by the surety causes the adjudication of the principal in the jurisdiction in which the bond was made, the surety shall be entitled to a refund of 50 percent of the bond amount. The application for 50 percent remission shall be made no later than 30 days following the expiration of the two-year period following the date of judgment.

- (2) Remission shall be granted upon condition of the payment of court costs and of the expenses of returning the principal to the jurisdiction of the surety; or
- (3) If, within 120 days after judgment, the surety surrenders the principal to the sheriff or responsible law enforcement officer, or said surrender has been denied by the sheriff or responsible law enforcement officer, surety locates the principal in custody of another jurisdiction, the surety shall only be required to pay costs and five percent of the face amount of the bond, which amount includes all surcharges. If it is shown to the satisfaction of the court, by presentation of competent evidence from the sheriff or the holding institution, that said surrender has been made or denied or that the principal is in custody in another jurisdiction or that said surrender has been made and that five percent of the face amount of the bond and all costs have been tendered to the sheriff, the court shall direct that the judgment be marked satisfied and that the writ of execution, *fi. fa.*, be cancelled.

(Code 1986, § 9-4-23; Ord. No. 2000-19, 9-19-00)

**Cross reference**—O.C.G.A. § 17-6-72.

#### **Sec. 22-58. Cancelling bond.**

When the condition of the bond is satisfied or the forfeiture of the bond has been discharged or remitted, the municipal court judge shall make an order canceling the bond. Conviction or acquittal of the defendant shall satisfy the terms of the bond written by any bail bondsman.

(Code 1986, § 9-4-24; Ord. No. 2000-19, 9-19-00)

**Sec. 22-59. Officer taking insufficient bail or accepting unqualified surety.**

Any person authorized to take bail, who takes bail which he knows to be insufficient, or accepts as surety any professional bondsman who is not qualified to act as surety, shall be guilty of an act of misconduct and shall be subject to disciplinary action by the department head in accordance with existing rules and regulations for same.

(Code 1986, § 9-4-25; Ord. No. 2000-19, 9-19-00)

**Sec. 22-60. Employee termination.**

Any professional bondsman who terminates the appointment of any employee authorized to sign bonds shall immediately file written notice thereof with the chief of police and business license supervisor, together with a statement that he has given or mailed notice to the employee. Such filed notice shall state the reasons, if any, for such termination. Information so furnished shall be privileged and shall not be used as evidence in any action against the professional bondsman.

(Code 1986, § 9-4-5; Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

**Secs. 22-61—22-70. Reserved.**

## DIVISION 2. LICENSE

**Sec. 22-71. Required; qualifications; application; guidelines.**

(a) No person shall act as a bail or professional bondsman in the city without having a license therefore from the city as provided in this article.

(b) To qualify for a license under this article, the following certified information must affirmatively appear on, or be annexed to, the application that:

- (1) The applicant is a citizen of the United States, and has been a bona fide resident of this state for one year last past.
- (2) The applicant is a natural person who has reached the age of 21 years.
- (3) The place of business of the applicant shall be located in this state and that such applicant will be actively engaged in the bail bond business and maintain a place of business or residential address accessible to the public.
- (4) Complete documentation showing the composition of the company for which applicant is applying to be an individual, a trust, or group of individuals, whether or not formed as a partnership or other legal entity, or a corporation or a combination of individuals, trusts, or corporations and setting forth the names and addresses of each partner, officer, director, shareholder, trust, member or other entity composing the company.
- (5) The employee applicants qualified to sign bonds, are persons of high character and provable integrity and each shall be vouched for by two other reputable citizens who are residents of the county.



- (6) A complete set of fingerprints and a recent credential-size, full face photograph of the applicant. The applicant's fingerprints shall be processed by the chief of police, who shall conduct a background check, including but not limited to the submission of the applicant's fingerprints to federal, state and local authorities and certify the applicant to be free of any record of any crime involving moral turpitude, felony or any violation of law applicable to the bail bonding business within previous five years.
  - (7) A complete set of fingerprints and a recent credential-size, full face photograph of each individual authorized to execute bonds on behalf of the company. Such application shall request and provide personal information sufficient to perform a background investigation on the employee applicant. The employee applicant's fingerprints shall be processed by the chief of police, who shall conduct a background check, including but not limited to the submission of the applicant's fingerprints to federal, state and local authorities and certify the employee applicant to be free of any record of any crime involving moral turpitude, felony or any violation of law applicable to the bail bonding business. Any person who will have power of attorney extended for the purpose of writing bonds must submit the above described application.
  - (8) An affidavit listing all real property in which the applicant has an interest, stating the ownership of such real property, any liens or encumbrances thereon and describing such property in detail, including but not limited to the true market value of such property. Such affidavit is to be submitted according to the standards promulgated by the chief of police.
  - (9) The applicant has, or has applied for a business license with the city and has or will pay that rate which is specified in the business license schedule.
- (c) A fee as set forth in the schedule of fees and charges shall be submitted with each application to the mayor and council, such fee to defray the cost of conducting a character investigation required by this section.
- (d) No person shall be permitted to sign professional bonds or act as an agent or representative of a bonding company if such person:
- (1) Has been convicted of a felony offense;
  - (2) Has been convicted of a crime involving moral turpitude;
  - (3) Has failed to meet bonding obligations in the city or any other city or county in the state of Georgia or elsewhere. This provision shall apply to all persons who have an ownership interest in a bonding business in another jurisdiction regardless of the name of the entity; or
  - (4) Fails to qualify as a bondsman under applicable state statutes governing who may act in such capacity.
- (e) No person shall be permitted to write professional bonds which are prohibited as a matter of law.

(f) Persons employed by the city will not be permitted to operate, own an interest in, or act in any capacity as an agent for a professional bonding company. In the event this provision is violated, the approved bonding company's privileges shall be suspended and/or revoked until such time as the conflict is remedied and such persons are no longer affiliated with the bonding company.

(g) These provisions in no way prohibit the city or its authorized agents from establishing additional standards with which bonding companies must comply, nor does it in any way limit the city's legal right to regulate the privilege of writing bail bonds.

(h) Applicants seeking permission to act as professional bondsmen in the city must qualify as follows:

- (1) Applicants must sign an agreement with the city providing for an escrow account in any one or more financial institutions designated as city depositories. This escrow shall be ten percent of that company's bonding capacity and shall not be less than \$2,500.00. If this escrow is encroached upon for any reason or if the city's chief of police otherwise determines that additional escrow is required to ensure the solvency or reliability of the professional bonding business, the city's chief of police may amend the escrow through written notice to the professional bonding business.
- (2) The president of a corporation operating a professional bonding business in the city shall provide the chief of police with the names of all partners, officers, stockholders, and any other person(s) or corporation(s) having an interest in or involved with the business of the corporation. This information shall be provided prior to the bonding company initiating business or upon the renewal of its license. The bonding company shall immediately notify the chief of police of any changes of ownership or direction. Failure of the corporation to comply with these provisions shall result in the immediate suspension of bonding privileges.
- (3) All employees and/or owners of a professional bonding company must be fingerprinted and photographed by the identification division of the city police department.
- (4) Each employee of a bonding company must file a properly executed power of attorney from that bonding company.
- (5) Professional bonding companies must receive the approval of the chief of police prior to posting a bond or any combination of bonds which total \$25,000.00 or more for any one individual.

(i) No professional bonding company may sign a bond in which another bonding company or third party receives compensation to arrange the release of an inmate from the city jail.

(j) All bonding companies shall file with the chief of police a monthly report. These reports will include the following information and shall be filed in the form of an affidavit:

- (1) List by name, in alphabetical order, amount, and date of bonds signed during each month.

- (2) List by name, in alphabetical order, case or indictment number and date of all bonds officially settled during each month.
  - (3) List by name, amount, and date of bond, all judgments rendered by the city, state and/or Superior Court of Cobb County and/or any other counties, subject to collection in the city.
  - (4) List by name, amount, and date of bond all forfeitures pending in Kennesaw and/or other cities or counties, subject to collection in the city.
  - (5) List personnel in the employment of submitting bonding company.
- (Code 1986, § 9-4-2; Ord. of 6-19-89(2); Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

**Sec. 22-71.1. Renewal of licenses.**

(a) Any professional bonding company licensed under this chapter shall be required to renew its license before December 31 of each consecutive year. Failure to pay the license fee by January 31 shall automatically revoke the license.

(b) Each application for renewal of such license shall be accompanied by a certified statement from the professional bonding company that it is in compliance withal requirements of any agreements with the city and the provisions of this Code section, along with copies of the monthly reports filed each month with the chief of police as required by section 22-71(j) of this section for the previous year.  
(Ord. No. 2001-08, 3-19-01)

**Sec. 22-72. Denial; suspension; revocation; nonrenewal.**

Each year upon application for a license under this article, the applicant shall comply with the requirements of this article, and the license shall be granted, renewed or denied in accordance with this article. The mayor and council may deny, suspend, revoke or refuse to renew any license issued in accordance with the requirements of this article for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the mayor and council.
- (2) Material misstatement, misrepresentation or fraud in obtaining the license.
- (3) Misappropriation, conversion or unlawful withholding of money belonging to others and received in the conduct of business under the license.
- (4) Conviction of a felony.
- (5) Fraudulent or dishonest practices in the conduct of business under the license.
- (6) Failure to comply with the provisions of this article.
- (7) Failure to return collateral security to the principal when the principal is entitled thereto.

- (8) When in judgment of the mayor and council, the licensee has, in the conduct of affairs under the license, demonstrated incompetency or untrustworthiness, or conduct or practices rendering him unfit to carry on the bail bond business, or making his continuance in such business detrimental to the public interest, or that he is no longer in good faith carrying on the bail bond business, or that he is guilty of rebating, or offering to rebate, or offering to divide his compensation, and for any or all such reasons, is found by the mayor and council to be a source of detriment, injury or loss to the public.

(Code 1986, § 9-4-4; Ord. of 6-19-89(2); Ord. No. 2000-19, 9-19-00)

**Sec. 22-73. Return of license upon termination of business.**

Any professional bondsman who discontinues writing bail bonds during the period for which he is licensed shall notify the chief of police and the city clerk and immediately return his license.

(Code 1986, § 9-4-3; Ord. No. 2000-19, 9-19-00)

**Sec. 22-74. State statutes governing professional bondsmen.**

Bondsmen shall comply with all applicable state statutes which control bonding procedures within the State of Georgia.

(Ord. No. 2000-19, 9-19-00)

**Sec. 22-75. Individuals other than professional bondsmen.**

The chief of police may allow an individual property owner to sign a bail bond under the following conditions:

- (1) The individual must own real property in Kennesaw or Cobb County.
- (2) The individual must prove ownership of said real property by either:
  - a. A current tax receipt; or
  - b. A copy of warranty deed transferring full interest in described piece of property.
  - c. The individual must sign an affidavit that he/she has equity in said property of at least twice the amount of said bail bond, excluding homestead exemption on each bond written.
  - d. Individual bondsmen shall not receive any compensation, gift or collateral for making or signing a defendant's bond and must sign an affidavit affirming such.

(Ord. No. 2000-19, 9-19-00)

**Secs. 22-76—22-95. Reserved.**

**ARTICLE IV. CHARITABLE SOLICITATIONS\***

**Sec. 22-96. Provisions incorporated by reference.**

The Georgia Charitable Solicitations Act of 1988 as set forth in O.C.G.A. § 43-17-1 et seq. is by this reference incorporated herein and made a part of this Code in as full and complete a manner and with like effect as though set out in full in this article.

**Secs. 22-97—22-115. Reserved.**

**ARTICLE V. COMMERCIAL SOLICITATIONS†**

**Sec. 22-116. Penalty for violation of article.**

Any person violating any provisions of this article shall, upon conviction thereof, be punished as provided in section 1-11.  
(Code 1986, § 9-3-6)

**Sec. 22-117. Registration required.**

Any person desiring to solicit or canvass upon the public streets, areas or parks or call from house to house in the city for the purpose of taking orders, selling or seeking clients for any publishing, manufacturing, order house or like organization shall register with and obtain a written permit from the business license department of the city.  
(Code 1986, § 9-3-1)

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\***State law reference**—Georgia Charitable Solicitations Act of 1988, O.C.G.A. § 43-17-1 et seq.

†**State law reference**—Peddlers and itinerant traders, O.C.G.A. § 43-32-1 et seq.

**Sec. 22-118. Application for permit; contents.**

Any person desiring a permit to solicit or canvass upon the public streets, areas or parks or call from house to house in the city shall file, on a form to be supplied by the business license department, an application stating the following:

- (1) Name of applicant;
- (2) Permanent home address;
- (3) Social security number;
- (4) Name and address of employer, firm, corporation or organization represented;
- (5) Names and addresses of all persons assisting in the soliciting or canvassing or calling from house to house in the city;
- (6) Nature of any merchandise, wares, goods or any similar items to be sold or offered for sale or given away in conjunction with the soliciting or canvassing or calling from house to house in the city; and
- (7) Proof of employment with a publishing, manufacturing, order house, or like company shall be shown to be satisfactory to obtain such permit.

(Code 1986, § 9-3-2)

**Sec. 22-119. Issuance of permit; identity card.**

Upon proper registration as provided in this article with the business license department, a written permit shall issue, to be valid for a period of 90 days from the date of issuance. In addition, identity cards shall be issued which must be carried by all persons while engaged in soliciting or canvassing upon the public streets, areas or parks or calling from house to house in the city.

(Code 1986, § 9-3-3)

**Sec. 22-120. Requirements of solicitors.**

Soliciting or canvassing upon the public streets, areas or parks, or calling from house to house in the city shall be subject to the following regulations:

- (1) All soliciting or canvassing upon the public streets, areas or parks or calling from house to house in the city shall only occur between the hours of 9:00 a.m. and 6:00 p.m.
- (2) The number of solicitors or canvassers or callers from house to house in the city for any single firm, corporation or organization shall not exceed 25 in number at any one time.
- (3) Immediately prior to any solicitation of funds within the city, each solicitor, canvasser or caller shall present his identity card, issued by the business license department, to each person solicited.

(Code 1986, § 9-3-4)

**Sec. 22-121. Prohibited acts.**

It shall be unlawful for any solicitor, canvasser or caller to do any of the following:

- (1) Falsely represent, directly or by implication, that funds are being solicited on behalf of any person or organization other than as registered with the business license department.
- (2) Without the express prior permission of an occupant or property owner, solicit at any residence, address, apartment complex or shopping mall where there is posted a sign forbidding any solicitation, other than areas open to public parking.
- (3) Remain on private premises after being asked to leave the premises or continue solicitation after being refused upon the public streets, areas or parks; such action shall constitute trespass or harassment, respectively.

(Code 1986, § 9-3-5)

**Secs. 22-122—22-140. Reserved.**

**ARTICLE VI. DEALERS IN PRECIOUS METALS AND GEMS\***

**Sec. 22-141. Provisions incorporated by reference.**

The provisions of O.C.G.A. §§ 43-37-1 through 43-37-7 on the subject of dealers in precious metals and gems are by this reference incorporated herein and made a part of this Code in as full and complete a manner and with like effect as if set out in full in this article.

**Secs. 22-142—22-160. Reserved.**

**ARTICLE VII. FLEA MARKETS**

**Sec. 22-161. Findings.**

The mayor and council finds and determines as follows:

- (1) The city believes that flea markets are a special type of business which requires specific approval of operations from the mayor and council.
- (2) The general appearance of the city and specifically areas surrounding flea market locations is marred when operations are unsightly, inappropriate and poorly maintained, and when, in some instances, unsafe structures, sheds and sales areas exist and debris and refuse accumulate. Failure to properly construct and maintain improvements upon the premises further detracts from the general appearance of the area and presents safety hazards.

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\***State law references**—Duties of purchasers of gold bullion, gold dust, etc., O.C.G.A. § 12-4-120 et seq.; dealers in precious metals and gems, O.C.G.A. § 43-37-1 et seq.; dealers in used watches, O.C.G.A. § 43-49-1 et seq.

- (3) The aesthetic quality and economic value of both commercial and residential areas surrounding the flea markets as well as the economy of the city are adversely affected by the unregulated operation of flea markets.
  - (4) Lives and property are endangered by traffic created by the flea markets which have been unregulated and uncontrolled and by vehicles for which no provisions for parking and safe ingress and egress have been made by flea market operators.
  - (5) Flea markets create difficulty in police supervision because of lack of any controls over the number, identification and types of vendors and merchandise sold, and may become targets for sale or dealing in stolen merchandise.
  - (6) Most flea markets fail to provide even minimum facilities for the protection of the health or comfort of persons on the premises in the nature of plumbing, electrical and bathroom facilities.
  - (7) The public health, safety and welfare of the city can be detrimentally and adversely affected by the unregulated operation of flea markets.
- (Ord. of 11-7-94(1), § 3-2-24(A))

**Sec. 22-162. Purpose.**

The purpose of this article is to prevent future problems and those foreseen to occur in the future through reasonable regulation, it being determined that the regulations contained in this article are minimum requirements needed to attempt to rectify identified problems.

(Ord. of 11-7-94(1), § 3-2-24(B))

**Sec. 22-163. Scope.**

This article shall apply to all businesses and locations in the city which meet the definition of flea market and all flea market vendors, promoters, owners and operators as defined in this article. This article shall not apply to developed and operating shopping centers, antique shops, jewelry stores, coin shops, salvage operations, clothing stores or special sales events not to exceed 14 days in duration or other businesses dealing in merchandise common to that dealt in by flea markets, where vendors therein are not operating among a collection of vendors renting or securing individual spaces within an overall operation.

(Ord. of 11-7-94(1), § 3-2-24(C))

**Sec. 22-164. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Flea market* means any business whereby there is operated a center for shopping among collected flea market vendors marketing merchandise to the public from booths, stalls, tables, benches, individual rooms or display areas, and similar display and marketing configurations and arrangements, for the sale of new and used merchandise. Flea markets shall not include



developed and operating shopping centers, antique stores, jewelry stores, coin shops, salvage operations, clothing stores or special sales events as accessory uses not to exceed 14 days in duration, or other businesses of merchandise in common with flea markets where the vendor therein is not operating among a collection of vendors or renting or securing individual space within an overall operation.

*Flea market promoter, operator or owner* means all persons or other forms of business entities operating, maintaining, managing and promoting flea markets.

*Vendor or flea market vendor* means all persons or other forms of business entities of every type and character operating among collections of other flea market vendors for sales to the public of new and used merchandise in collected marketing centers for sales from stalls, booths, tables, benches, rooms and other similar displays or marketing configurations and arrangements, excluding those operations defined under this section.

(Ord. of 11-7-94(1), § 3-2-24(D))

**Cross reference**—Definitions generally, § 1-2.

#### **Sec. 22-165. Violations and penalties.**

(a) Any person violating any of the provisions of this article shall, upon conviction, be punished as provided in section 1-11.

(b) In addition to the penalty provided in subsection (a) of this section, every violation of the terms of this article by any person shall be termed a nuisance and a continuing nuisance so long as such violation may be continued; and such violation is subject to abatement as a nuisance as provided by the laws of this state.

(c) Any violation of this article shall be subject to injunction. Violations shall also be punished by revocation, suspension or probation of the license or permit.

(d) The remedies provided for in this section are cumulative. Pursuance of any one remedy shall not be deemed an election of remedies and shall not prohibit pursuance of more than one remedy simultaneously.

(Ord. of 11-7-94(1), § 3-2-24(K))

#### **Sec. 22-166. Business certificate requirements.**

(a) It shall be unlawful for any person or entity to conduct a flea market business or for any flea market promoter, operator or owner to operate or allow to be operated such a business, or for any flea market vendor to display or sell wares of any kind at a flea market without a business license from the city. Business licenses issued for a flea market or any flea market promoter, operator or owner shall be valid only for the licensed location. A business license issued for a flea market vendor shall be valid when the vendor is operating from any duly licensed flea market in the city. It shall be unlawful for any flea market promoter, owner, operator or agent providing or renting space for flea market vendors to rent any sales area to any vendor or to provide space free of rent or to allow any vendor to use any sales area within a flea market unless the vendor has a valid business license from the city. It shall be the duty

of the flea market promoter, operator, owner or agent renting or providing space to verify that such license is in effect for each vendor. Failure to verify that each vendor has a valid business license, or the renting or provision of space for any unlicensed vendor to display or sell wares, shall subject the business license of the flea market operator, owner or promoter to revocation.

(b) All persons desiring to obtain a business license as a vendor or for a flea market as a flea market promoter, operator or owner shall make written application to the city through the business license office on forms to be prepared and approved by the city. Applicants shall supply such reasonable information as may be required by the city. If the license is for a flea market operation, the information shall include the square footage of sales area within the flea market. An application fee, which is nonrefundable if a permit is not issued, shall be submitted with each application to operate a flea market.

(c) All applicants for a license under this article shall furnish all data, information and records reasonably related to the evaluation of an application, as may be requested by the city or any interested city department. An applicant, by filing an application for a license under this article, agrees to produce for oral interrogatories any person under the applicant's supervision or control who might have information pertinent to the application, upon the request of the city to do so. Failure to furnish such information or produce persons within 30 days of the request shall automatically serve to dismiss the application.

(d) No application for any license under this article shall be granted where the application or investigation shows any of the following to exist:

- (1) The applicant is of bad moral character or has a bad reputation in the community or does not have sufficient mental capacity to conduct the business for which application is made.
- (2) The applicant has had any license issued under the police power of any city or other governmental entity previously suspended or revoked.
- (3) The location, if applicable, is not properly zoned.
- (4) The applicant, as a previous holder of a license as a flea market promoter, operator, owner or vendor, has violated any law, including this article, relating to such business within a ten-year period immediately preceding the date of application.
- (5) No flea market use permit is in effect for the location, if applicable.
- (6) The applicant has supplied false information either upon his application or in any communication with any official of the city relative to his application.
- (7) The applicant has failed to pay any fee required under this article or has otherwise failed to comply with the provisions of this article.
- (8) The application, during the 12-month period next preceding the filing of his application, has engaged in any deceptive business practice as defined by this article.
- (9) No original license under this article shall be issued to any person for pecuniary gain where any individual having an interest either as owner, partner, stockholder owning

at least 25 percent of the stock of the corporation, such interest being direct or indirect, beneficial or absolute, or his spouse or manager of the operation, shall have been convicted or shall have taken a plea of nolo contendere within ten years immediately prior to the filing of such application for any felony or misdemeanor of any state or of the United States or any municipal or city ordinance except traffic violations. The term "conviction" shall include an adjudication of guilt or plea of guilty or nolo contendere, or the forfeiture of a bond when charged with a crime. Where the violation is for a misdemeanor, forfeiture of bond, violation of a municipal or city ordinance or where there is a plea of nolo contendere, the council may, after investigation, if appealed by the applicant, waive such violation as a disqualification.

(10) In addition to the provisions of subsections (d)(1) through (d)(9) of this section and in determining whether or not any license applied for under this article shall be granted, the following shall be considered in the public interest and welfare:

- a. If the applicant is a previous holder of a license, the manner in which he conducted business thereunder, and particularly as to the necessity for unusual police observation and inspection in order to prevent the violation of any law, regulation or ordinance relating to such business.
- b. The location for which the license is sought, if applicable, as to traffic congestion, general character of the neighborhood and the effect such an establishment would have on the adjacent and surrounding property values.
- c. If it appears that the applicant's spouse or another person is using the applicant as a guise or dummy to obtain a license.

(e) All applications for business licenses for a flea market owner or operator required by this article shall be investigated by the city police department. The police department shall report its recommendations to the business license office. The applicant for a license to operate a flea market shall be fingerprinted and shall supply such other information as the police department deems necessary to complete its investigation.

(f) License fees for flea market owners, promoters, or operators and for flea market vendors shall be as established in the schedule of fees and charges.

(g) Any license issued under this article shall be posted conspicuously at the place of doing business of the licensee.

(h) No license issued under this article shall be transferable.

(i) Each license for a flea market or flea market promoter, operator or owner shall be for one location only. Flea markets or flea market promoters, operators or owners shall obtain a separate license, paying a separate fee, for each place of business.

(j) Those vendors operating in the city a maximum of three consecutive days selling merchandise as a part of a show, festival, fair, or promotion shall be required to obtain a business license that shall be valid only for the period of time that special show, fair, or

promotion is being held. This temporary license shall not apply to flea market vendors, special tent sales, peddlers or any business not connected with a show, festival, fair, or promotion. The fee for this license shall be as set forth in the schedule of fees and charges.

(Ord. of 11-7-94(1), § 3-2-24(E))

**Sec. 22-167. Use permit required.**

(a) No flea market shall be operated upon any realty or in or upon any personal property located on any realty unless and until a special use permit for a flea market is granted by the council. This special use permit for a flea market, referred to in this section as a "flea market use permit" or "permit," shall be in addition to all other requirements of the city.

(b) Applications for flea market use permits shall be applied for and advertised in the same manner as applications for rezoning, and public hearings will be held thereon in the same manner as applications for rezoning are conducted, as may be amended from time to time. Fees for filing and processing of applications shall be in an amount determined from time to time by resolution of the mayor and council. A schedule of such fees shall be maintained on file in the planning and zoning department and in the office of the clerk of the council.

(c) Flea market use permits may be issued for such period of time as the council deems appropriate under the circumstances of each application.

(d) Flea market use permits shall be granted only if the council determines that there will be no significant adverse effect on the surrounding neighborhood or area in which the proposed use will be located; that no nuisance as defined by state law would result to the general area; that the quiet enjoyment of surrounding property would not be adversely affected; and that property values of surrounding property would not be adversely affected. No permit shall be issued where the application or any investigation shows the existence of any of the conditions enumerated in this article under section 22-166(d).

(Ord. of 11-7-94(1), § 3-2-24(E))

**Sec. 22-168. Use regulations.**

The following regulations shall apply to all flea markets licensed under this article:

- (1) There shall be no on-street parking at any flea market. Each flea market shall provide on-site paved parking at the rate of one space per 100 square feet of sales area. No parking or parking spaces shall be located on or within any road right-of-way. It shall be the responsibility of the promoter, operator or owner to assure at all times that no vehicle of any vendor, customer, patron, visitor, guest, invitee or other person frequenting the flea market is parked on any street or road or street or road right-of-way or off the site of the flea market, but is parked in a space acceptable under the city parking regulations and this article.
- (2) The flea market owner or operator shall do whatever is necessary, based upon the circumstances of his individual property, to ensure ingress and egress only at curb cuts and locations approved by the public works department.

- (3) There shall be no outside storage of any kind whatsoever. There shall be no outside sales of any kind whatsoever from any space, stall, shed or area which is not permanently covered by a roof and completely floored by a concrete floor of a minimum thickness of four inches, except at locations designated as such and approved at the time of the granting of the use permit. However, no sales or displays shall occur within required parking areas or interfere with general traffic flow.
  - (4) No sales of any kind whatsoever shall be made from any shed, structure or building of any kind unless such structure meets or exceeds the minimum requirements of all the city codes (for example, building code, fire code, plumbing code, electrical code, etc.). Structures shall require building permits and inspections by the city the same as for other construction. Flea markets shall be classified as group M, mercantile occupancy, under the city building code and shall meet all such requirements except that applications for permits for all open structures shall require plans to be submitted which are signed and sealed by an architect or engineer along with design calculations to substantiate compliance with code wind uplift requirements.
  - (5) All plumbing shall meet minimum code requirements, except that each flea market shall provide, at a minimum, for use by the public, facilities based on occupant loads as follows:
    - a. For flea markets located within enclosed structures, the occupant load shall be determined in the same manner as mercantile occupancy and exit capacity.
    - b. For a flea market located in the open air, the occupant load shall be determined as two people for each table, counter, or booth of no more than 20 square feet.
    - c. After the occupant load is identified, toilet facilities will be provided in the same manner as for commercial buildings of multiple tenants.
    - d. No temporary bathroom facilities shall be permitted.
  - (6) Notwithstanding any other provisions of this Code, no person, including but not limited to a flea market promoter, operator, owner, employee, manager, vendor or invitee, shall be allowed to camp or reside overnight with or without a recreational vehicle, tent, sleeping bag, vehicle or other structure at a flea market, except that the owner may allow a reasonable number of overnight security personnel who may be either the owner or agents or employees of the owner.
  - (7) No animal, fish, fowl or insect of any kind shall be sold, traded, housed, caged, bartered, swapped or given away at any flea market.
- (Ord. of 11-7-94(1), § 3-2-24(F))

**Secs. 22-169—22-190. Reserved.**

**ARTICLE VIII. INSURERS\*****Sec. 22-191. License fees.**

(a) There is hereby levied an annual license fee upon each insurer doing business within the city in an amount of \$75.00. For each separate business location in excess of one not covered by section 22-192, which is operating on behalf of such insurers within the city, there is hereby levied a license fee in an amount of \$75.00. For the purposes of this section, the term "insurer" means a company which is authorized to transact business in the classes of insurance designated in O.C.G.A. § 33-3-5.

(b) The license fee amounts levied under this section are derived from the population fee schedule contained in O.C.G.A. § 33-8-8(b)(1). The exact dollar amount levied is based on the 2000 official census report for the city (21,675 citizens). Fees for subsequent years may change in accordance with subsequent population census reports for the city in order to properly reflect the statutory fee owed.

(Ord. No. 90-289, § 1, 12-17-90; Ord. No. 2001-20, 9-17-01)

**Sec. 22-192. Fee for insurers insuring certain risks at additional business locations.**

(a) For each separate business location, not otherwise subject to a license fee under section 22-191, operated and maintained by a business organization which is engaged in the business of lending money or transacting sales involving term financing and which, in connection with such loans or sales, offers, solicits or takes application for insurance through a licensed agent of an insurer for insurance, such insurer shall pay an additional license fee of \$26.25 per location for each year.

(b) The additional license fee levied under this section is derived from O.C.G.A. § 33-8-8(b)(2); the greater of \$10.00 or 35 percent of the amount due under O.C.G.A. § 33-8-8(b)(1). Such additional fees for subsequent years may change with subsequent population census reports for the city in order to properly reflect the statutory amount owed under O.C.G.A. § 33-8-8(b)(2).

(Ord. No. 90-289, § 2, 12-17-90; Ord. No. 2001-20, 9-17-01)

**Sec. 22-193. Insurers agency license fees; independent insurance agencies, brokers, etc., not otherwise licensed.**

There is hereby levied for each year an annual license fee upon independent agencies and brokers for each separate business location from which an insurance business is conducted and which is not subject to the company license fee imposed by section 22-191 hereof in the amount of \$75.00 for each such location within the city.

(Ord. No. 90-289, § 3, 12-17-90; Ord. No. 2001-20, 9-17-01)

**\*State law references**—Local tax on life insurance companies, O.C.G.A. § 33-8-8.1; local tax on other than life insurance companies, O.C.G.A. § 33-8-8.2.

**Sec. 22-194. Gross premiums tax imposed on life insurers.**

There is hereby levied for each year an annual tax based solely upon gross direct premiums upon each insurer writing life, accident and sickness insurance within the state in an amount equal to one percent of the gross direct premiums received during the preceding calendar year in accordance with O.C.G.A. § 33-8-8.1. Gross direct premiums as used in this section shall mean gross direct premiums as used in O.C.G.A. § 33-8-4. The premium tax levied by this section is in addition to the license fees imposed by section 22-191 of this article.  
(Ord. No. 90-289, § 4, 12-17-90)

**Sec. 22-195. Gross premiums tax, all other insurers.**

There is hereby levied for each year an annual tax based solely upon gross direct premiums upon each insurer, other than an insurer transacting business in the class of insurance designated in O.C.G.A. § 33-3-5(1), doing business within the state in an amount equal to 2½ percent of the gross direct premiums received during the preceding calendar year in accordance with O.C.G.A. § 33-8-8.2. Gross direct premiums as used in this section shall mean gross direct premiums as used in O.C.G.A. § 33-8-4. The premium tax levied by this section is in addition to the license fees imposed by section 22-191 of this article.  
(Ord. No. 90-289, § 5, 12-17-90)

**Sec. 22-196. Due date for license fees.**

License fees imposed in sections 22-191, 22-192 and 22-193 shall be due and payable on January 1 of each year.  
(Ord. No. 90-289, § 6, 12-17-90)

**Secs. 22-197—22-215. Reserved.****ARTICLE IX. MASSAGE PARLORS\*****Sec. 22-216. Applicability.**

(a) This article shall apply to all massage therapists, including employees of similar types of businesses with the exception of sections 22-226 and 22-227.

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**\*Editor's note**—Ord. No. 2007-32, Att. A, adopted Nov. 5, 2007, amended the former Art. IX, §§ 22-216—22-230, and enacted a new Art. IX as set out herein. The former Art. IX pertained to similar subject matter and derived from Code 1986, §§ 9-7-1—9-7-11, 9-7-13—9-7-15; Ord. of Nov. 4, 1991(1), §§ 9-7-16—9-7-18); Ord. No. 2007-17, adopted May 21, 2007 (rescinded Nov. 5, 2007).

**State law references**—Giving massages in places used for lewdness, prostitution, assignation or masturbation for hire, O.C.G.A. § 16-6-17; Georgia Massage Therapy Practice Act, O.C.G.A. § 43-24A et seq.

**Sec. 22-217. Penalty for violation.**

Any person who shall violate any provisions, requirements, terms or conditions of this article shall, upon conviction, be punished as provided in section 1-11.

(Code 1986, § 9-7-14)

**Sec. 22-218. License required; application.**

Any person desiring to engage in the business, trade or profession of a masseur shall, before engaging in such business, trade or profession, file an application for a license addressed to the mayor and council. Such application shall be in writing and shall set forth or show compliance with the following:

- (1) The applicant must be fingerprinted by the city police department and a character reference check shall be run on all persons who shall operate as masseur, and all employees thereof. Fingerprints must be made at least ten to 15 days prior to issuance of a license to allow for investigation of the applicant and the employees.



(b) Nothing in this article shall be construed to affect, restrict, or prevent the practice, services, or activities of those individuals and/or entities specifically delineated in O.C.G.A. § 42-24A-19, as now or may hereafter be amended from time to time.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-217. Penalty for violation.**

Any person who shall violate any provisions, requirements, terms or conditions of this article shall, upon conviction, be punished as provided in section 1-11.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-218. License required; application.**

Any person desiring to engage in the business, trade or profession of a massage therapist shall, before engaging in such business, trade or profession, file an application for a business license addressed to the mayor and council. Such application shall be in writing and shall set forth or show compliance with the following:

- (1) Pursuant to O.C.G.A. § 36-60-6, as may be amended from time to time, the applicant must provide evidence of the license required under O.C.G.A. § 43-24A et seq. No business license shall be issued to any applicant without such licensure being presented.
- (2) The applicant must be fingerprinted by the city police department and a character reference check shall be run on all persons who shall operate as a massage therapist, and all employees thereof. Fingerprints must be made at least ten to 15 days prior to issuance of a license to allow for investigation of the applicant and the employees.
- (3) Name and address of applicant.
- (4) Name and address of any person having previously employed the applicant for a period of two years or longer.
- (5) If such applicant is a corporation, the address or addresses of such corporation as well as the names and addresses of the agents and employees of such corporation for a period of two years immediately prior to the filing of such application.
- (6) Qualifications must be plainly stated together with required exhibits annexed to such application.
- (7) A certificate certifying as to the good moral character of the applicant, signed by three currently qualified and registered voters of good moral character of the city. Such letters shall not be required for annual renewals of licenses issued under this article.
- (8) Should the applicant be a corporation, such corporation shall also submit with such application a certificate, executed as described in subsection (6) of this section, certifying as to the good moral character of the employees and agents of the corporation who are actually engaged in such business for the corporation.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-219. Qualifications of applicant.**

(a) In accordance with, and in addition to, all state requirements for licensure of massage therapists any applicant under this article, prior to making application for a license, must have the following qualifications:

- (1) The applicant may be male or female and must be of good moral character, and if the applicant is a corporation, such corporation must be created in or domesticated by the laws of this state.
- (2) Such applicant must furnish a current health certificate of a medical doctor which shall accompany such application as an exhibit. Should the applicant be a corporation it shall furnish two certificates for all of its agents or employees actually engaged and working under such license.

(b) A massage therapist shall provide massage for physical therapy and health only and shall be entitled to engage in such profession within and between the hours of 7:00 a.m. and 10:00 p.m., Eastern Standard Time.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-220. Issuance of license; fee.**

If the application for a business license under this article is submitted in proper form and is approved by the mayor and council, then the business license department is authorized to issue a business license to such applicant upon the payment of an annual license fee as set forth in the schedule of fees on file in the office of the mayor and council and/or business license bureau.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-221. Revocation of license; hearing.**

A business license granted under this article shall be subject to revocation for cause. Whenever in the opinion of the business license department there is cause to revoke such business license, a written notice of intention to revoke it and the grounds therefore shall be furnished the holder thereof at least three days before a regular or called meeting of the mayor and council, at which time the holder of the business license may make such showing as he may deem proper. After a hearing, the mayor and council may revoke such license if, in its discretion, it is to the best interest, peace and good order of the city.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-222. Signed copy of regulations to be filed with license application.**

A signed copy of this article or the ordinance from which this article is derived will be filed with any business license application by the business license department.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-223. Authority to train personnel.**

Any applicant granted a business license under this article shall have the authority to employ those individuals granted provisional massage therapists license by the Georgia Board of Massage Therapy in accordance with O.C.G.A. § 43-24A et seq., provided that the business licensee shall furnish to the business license department, there to be kept by such department, a health certificate of such employee from a medical doctor.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-224. Information concerning employees to be filed with business license department.**

It shall be the duty of all persons holding a business license under this article to file with the business license department the names of all employees, their home addresses, home telephone numbers and places of employment. Changes in the list of employees together with the names of new employees must be filed with the business license department within three days from the date of any such change.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-225. Record of treatments to be maintained.**

It shall be the duty of any person granted a business license under this article to maintain correct and accurate records of the names and addresses of the persons receiving treatment at such establishment, the type of treatment administered, and the name of the person at the establishment administering such treatment. Such records shall be subject to inspection at any time by any member of the business license department.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-226. Treatment of persons of opposite sex.**

(a) *Restricted.* It shall be unlawful for any person holding a business license as a massage therapist to treat a person of the opposite sex except upon the signed order of a licensed physician, osteopath or registered physical therapist, which order shall be dated and shall specifically state the number of treatments, not to exceed ten. The date and hour of each such treatment given and the name of the operator shall be entered on such order by the establishment where such treatments are given and shall be subject to inspection by the business license department. The requirements of this section shall not apply to treatments given in the residence of the patient, the office of a licensed physician, osteopath or registered physical therapist, or in a regularly established and licensed hospital or sanitarium.

(b) *Scope of section.* A person who applies manual or mechanical massage or similar treatment to the human trunk or limbs shall be deemed, within the terms of this section, as a masseur or masseuse.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-227. Patronage of massage parlors by minors.**

(a) *Restricted.* It shall be unlawful for any person under the age of 18 years to patronize any massage parlor unless such person carries with him at the time of such patronage a written order directing the treatment to be given signed by a regularly licensed physician.

(b) *Duty of operator.* It shall be the duty of the operator of a massage parlor to determine the age of the persons patronizing such massage parlor, and a violation of this section shall be grounds for revocation of the license of such massage parlor.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-228. Massages by unlicensed persons.**

Massages may be given by persons not holding a license as a massage therapist only in accordance with O.C.G.A. § 43-24A-9, as may be amended from time to time.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-229. Prohibited contact.**

No massage therapist shall manipulate, fondle or handle the sexual organs of any person.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Sec. 22-230. Licensed massage therapist.**

Any persons licensed pursuant to O.C.G.A. § 43-24A shall be entitled to practice as a massage therapist as required by the State of Georgia.

(Ord. No. 2007-32, Att. A, 11-5-07)

**Secs. 22-231—22-250. Reserved.**

**ARTICLE X. FINANCIAL INSTITUTIONS BUSINESS LICENSE TAX\***

**Sec. 22-251. Levied.**

In accordance with O.C.G.A. § 48-6-93, there is hereby levied an annual business license tax upon all depository financial institutions located within the city at a rate of 0.25 percent of the gross receipts of such depository financial institutions. "Gross receipts" shall mean gross receipts as defined in O.C.G.A. § 48-6-93. "Depository financial institutions" shall mean state and national banks, state building and loan associations, and federal savings and loan associations.

(Ord. of 11-7-94(1), § 3-2-23(A))

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\*State law reference—Local depository financial institutions business license tax, O.C.G.A. § 48-6-93.

**Sec. 22-252. Minimum amount of tax.**

The minimum annual amount of business license tax due from any depository financial institution pursuant to section 22-251 shall be \$1,000.00.  
(Ord. of 11-7-94(1), § 3-2-23(B))

**Sec. 22-253. Filing of return.**

Pursuant to O.C.G.A. § 48-6-93(c), each depository financial institution subject to the tax levied under this article shall file a return of its gross receipts with the business license office on March 1 of the year following the year in which such gross receipts are measured. Such return shall be in the manner and in the form prescribed by the commissioners of the department of revenue based on the allocation method set forth in O.C.G.A. § 48-6-93(d). The city business license office shall assess and collect the tax levied pursuant to this article based upon the information provided in such return.  
(Ord. of 11-7-94(1), § 3-2-23(C))

**Sec. 22-254. Due date.**

Taxes levied pursuant to this article shall be due no later than 30 days after filing of the return prescribed by section 22-253, unless extended by the mayor and council.  
(Ord. of 11-7-94(1), § 3-2-23(D))

**Sec. 22-255. Copies of article to be provided.**

The city clerk is hereby directed to forward a copy of this article to each depository financial institution in the city and to the home office of each such depository financial institution if located outside the city.  
(Ord. of 11-7-94(1), § 3-2-23(E))

**Sec. 22-256. Reserved.**

**Editor's note**—Ord. No. 1999-15, adopted December 6, 1999, deleted in its entirety former section 22-256, which pertained to temporary certificates, and derived from Ord. of 11-7-94(1), § 3-2-25.

**Secs. 22-257—22-275. Reserved.****ARTICLE XI. PAWNBROKERS\*****Sec. 22-276. Issuance of license.**

Licenses may be issued by the mayor and council to applicants desiring to operate as pawnbrokers, subject to the following terms and conditions:

- (1) No license shall be issued to any applicant who has been convicted of a felony or a crime involving moral turpitude as defined by the laws of the state unless a full and complete pardon has been granted.

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\***State law reference**—Business and occupation taxes, O.C.G.A. § 48-13-5 et seq.

- (2) No license shall be issued to any applicant under the terms of this article if any false information is furnished upon the application by the applicant to the appropriate authorities of the city.
  - (3) No license shall be issued under the terms of this article if the applicant has ever been convicted of usury under the laws of this state or of any other state.
  - (4) No license shall be issued until the applicant has been investigated by the police department of the city, and a favorable report received from the police department as to his general reputation in the business community.
  - (5) No license shall be issued to any applicant who is not a resident of this county.
  - (6) No license shall be issued to any applicant who does not provide proof of financial responsibility.
  - (7) No license shall be issued unless the names and addresses of all persons holding any interest in the business are listed and those persons have signed the application.
  - (8) No license shall be issued to any applicant who is engaged in any finance or lending business unless this requirement is expressly waived by the mayor and council.
- (Code 1986, § 9-2-1)

**Sec. 22-277. Entry and examination by police.**

Upon making application for and receiving a license from the city to operate as a pawnbroker, the holder of the license expressly authorizes the police department of the city to enter upon his premises and to inspect and examine any articles in the business for the purpose of determining whether or not they have been stolen or otherwise illegally obtained by the applicant or the pawnor, and the applicant expressly agrees that no search warrant shall be necessary, but consents to such examination and inspection at any time upon request by any police officer of the city.

(Code 1986, § 9-2-2)

**Sec. 22-278. Persons from whom articles may not be received.**

No holder of a pawnbroker's license shall accept any article of pawn from:

- (1) Any person under the age of 21 years;
  - (2) Any person who is intoxicated; or
  - (3) Any person who is not a resident of the state.
- (Code 1986, § 9-2-3)

**Sec. 22-279. Record of pawned articles.**

The pawnbroker shall keep available for inspection by the appropriate authorities of the city, including but not limited to the police department, an itemized list of all articles pawned,

together with a full and complete description thereof, the amount loaned on each article, the due date of the loan, the name and address of the pawnor, the age of the pawnor, and the place of employment of the pawnor.

(Code 1986, § 9-2-4)

**Sec. 22-280. Evidence of loan.**

The pawnbroker shall make a loan only by written, negotiable instrument or by receiving a receipt for the amount of the loan by the pawnor.

(Code 1986, § 9-2-5)

**Sec. 22-281. Compliance with lending laws.**

The pawnbroker shall comply with all the laws of the state as to the rate of interest and all provisions of the Uniform Commercial Code of the state applicable to lending.

(Code 1986, § 9-2-6)

**Sec. 22-282. Suspension and revocation of license.**

A violation of any of the provisions of this article shall be good cause for suspension and/or revocation of the license. If the city clerk or any police officer should determine that a probable violation has occurred, he shall place the issue before the mayor and council at its next regularly scheduled meeting or at a special meeting called for the purpose of determining whether a violation has occurred. At least ten days' notice of the hearing before the mayor and council shall be provided the licensee. At the conclusion of the hearing the mayor and council may issue a warning, suspend the license for a definite period of time, revoke the license or take no action if the council finds no violation by the licensee. In the event of a revocation or suspension, no portion of the annual license fee shall be returned to the licensee.

(Code 1986, § 9-2-7)

**Sec. 22-283. Additional restrictions authorized.**

The mayor and council shall have the power to impose additional restrictions on the pawnbroker, and the pawnbroker shall be required to comply therewith upon 30 days' notice.

(Code 1986, § 9-2-8)

**Secs. 22-284—22-300. Reserved.**

## ARTICLE XII. GARAGE AND YARD SALES

### Sec. 22-301. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Garage or yard sale* means a sale by a private property owner of personal property used by the homeowner's family or neighbors, either in the garage area of the house, basement, interior of the house or on the lawn of the house. No new or additional personalty shall be sold in such sales.

(Code 1986, § 8-5-231)

**Cross reference**—Definitions generally, § 1-2.

### Sec. 22-302. Restrictions.

Garage or yard sales shall be permitted only under the following rules and regulations:

- (1) Only homeowners may apply to the city clerk for a permit for a garage or yard sale.
- (2) No sale shall be held on property in any residentially zoned district more than three days in succession, and no more than three weekends per calendar year.

(Code 1986, § 8-5-232; Ord. No. 2003-13, § 1, 4-21-03)

### Sec. 22-303. Parking; signs.

A garage or yard sale shall be conducted in a neat and orderly fashion, and automobile traffic and parking shall be controlled. All signs shall be removed within 24 hours.

(Code 1986, § 8-5-233)

### Sec. 22-304. Exemptions from article.

Nothing in this article shall be interpreted to govern sales conducted by nonprofit organizations.

(Code 1986, § 8-5-234)

### Secs. 22-305—22-349. Reserved.

## ARTICLE XIII. TAXICABS AND LIMOUSINES

### DIVISION 1. GENERALLY

### Sec. 22-350. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Business license* means the license required of all persons engaged in business in the city as set forth in chapter 22, concerning licenses, permits and businesses, as amended.



*Chauffeur* means, for purposes of this article, any person with a Georgia state driver's license who meets the qualifications as prescribed in O.C.G.A. § 46-7-85.10 and who is authorized by the public service commission to drive a sedan, limousine, extended limousine, van or minibus.

*Chief* means the chief of police.

*Dispatcher* means a person assigned to a base of operations, in contact with taxicabs of the licensee's company having access to a telephone to talk with passengers or place phone calls in the event of an emergency.

*Domicile* means the place where the corporate establishment is maintained; its principal place of business.

*Licensee* means a person licensed by the city business license office to engage in the vehicle for hire business.

*Limousine* means any motor vehicle that meets the manufacturer's specifications for luxury limousine with a designed seating capacity for no more than ten passengers with a minimum of five seats located behind the operator of the vehicle, and which does not have a door at the rear of the vehicle designed to allow passenger entry or exit; further, no vehicle shall be permitted to be operated both as a taxicab and as a limousine. Limousines and limousine carriers shall be fully regulated by the state under the public service commission.

*Motor vehicle safety standards* means standards promulgated by the police department for approval by the mayor and council that all vehicles for hire regulated under this article must meet.

*Operator's permit* means the written authority granted by the police department to persons who qualify to operate vehicles for hire. Sometimes referred to as driver's permit.

*Permittee* means a person granted a permit to operate vehicles for hire in the incorporated areas of the city.

*Sedan* means any luxury or nonluxury sedan or town car type vehicle which has a seating capacity of not more than five passengers and the driver and which does not contain a taximeter designed to measure electronically or mechanically the distance traveled or time.

*Sedan carrier* means any person operating a service regularly rendered to the public by furnishing transportation as a motor common carrier for hire, not over fixed routes, by means of sedans driven by chauffeurs on the basis of telephone contract, written contract or other prearrangement.

*Taxicab* means a motor vehicle used as a public conveyance which does not meet the requirements of a limousine, is not a van, minibus or sedan, has a taximeter and is subject to the rules and regulations of this article.

*Valid complaint* means a complaint against an operator or business to the business license office where the complainant provides his name, address and substance of complaint, and expresses a willingness to attend any hearing regarding his complaint.

*Van* means any motor vehicle, other than a limousine, extended limousine, minibus or a sedan, with a designed seating capacity for no more than 15 passengers, including the driver.

*Vehicle for hire* means any motor vehicle designed or used for the purpose of transporting passengers for consideration or charges which are determined by agreement, contract, mileage or by the length of time the vehicle is used. Such term does not include vehicles regulated by the state public service commission. For the purposes of this article, vehicles for hire shall mean taxicabs and sedans.

*Vehicle for hire or taxicab stand* means any area where vehicles for hire or taxicabs park, stop, wait or stand for the purpose of accepting or soliciting any consideration, charge or fee in exchange for transportation.

*Vehicle permit sticker* means a sticker issued to a licensee upon proof of insurance and verification of compliance with city vehicle mechanical safety standards, to be placed on each vehicle for hire operated under this article and renewed annually.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-351. Persons deemed engaged in business of vehicles for hire.**

Any person who within the city stops, parks, or waits in a vehicle for hire at a vehicle for hire stand or engages in picking up passengers and accepting or soliciting any consideration, charge or fee which is determined by an agreement, by mileage, by the length of time the vehicle is used or by contract for the use of any motor vehicle or other vehicle designed or used for the purpose of transportation is deemed to be engaged in the business of vehicles for hire.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-352. Sedan carriers and chauffeurs exempt from certain provisions.**

(a) The following provisions of this article shall not apply to sedan carriers:

- (1) Subsection 22-381(c)(4), regarding a copy of the rate schedule and operation hours.
- (2) Subsection 22-381(c)(8), regarding dispatcher's address and operating hours.
- (3) Subsection 22-383(1)a, regarding submitting a company logo and/or identification color scheme.
- (4) Subsections 22-355(a), (b) and (c), regarding vehicle markings and rates.
- (5) Subsection 22-356(c), regarding the prominent display of the telephone number of the business license office.
- (6) Subsection 22-363(a), regarding the first sentence pertaining to notification of a dispatcher concerning personal property left behind.
- (7) Subsection 22-364(a), second sentence, regarding display of the business license office telephone number.

(b) The following provisions shall not apply to a chauffeur if such chauffeur can show that he has provided substantially the same information to the public service commission within the last 12 months:

- (1) Subsection 22-381(c), regarding submitting to a police clearance consisting of a background investigation and/or fingerprinting.
- (2) Subsection 22-391(c), regarding submitting to a police clearance consisting of a background investigation and/or fingerprinting.

(c) All other provisions of this article shall remain in full force and effect with regard to sedan carriers and chauffeurs.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-353. Previous denial or revocation of business license or operator's permit.**

All persons who have had their business license or operator's permit revoked must reapply for a license or permit. No license or operator's permit shall be issued to an applicant if within 12 months immediately preceding the filing of the application the applicant for a license, operator's permit or renewal has had an application denied or a license or operator's permit revoked.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-354. Vehicle safety standards; verification.**

(a) Each person operating a taxicab service or as a sedan carrier shall maintain each vehicle thus operated in a good, safe and serviceable mechanical condition.

(b) The police department shall recommend minimum motor vehicle safety standards for approval by the mayor and council. These standards will be filed with the clerk of the city, the business license office and the police department. All persons or entities operating, owning or leasing vehicles for hire shall be presumed to have knowledge of such standards. All vehicles for hire operating on the roads and streets of the city will be required to maintain their motor vehicles in compliance with such standards. A verification statement that the motor vehicles to be used in the business meet or exceed the requirements and standards approved by the mayor and council shall be required before vehicle permit stickers may be issued. Such verification must be executed by the sole proprietor, named partner or president or CEO of a corporation.

(c) Vehicles shall be subject to random inspections at any time by the police department and business license office. A vehicle found to be substandard shall be removed from service immediately and will remain removed from service until adequate proof is provided to the chief of police or his designee or the supervisor of the business license office that the vehicle is compliant with the standards approved by the city. Proof that a vehicle has been brought into compliance with the standards shall not affect the ability to assess any and all civil or criminal penalties or actions against the business or driver for violation of this Code.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-355. Vehicle markings; rates.**

(a) Each taxicab shall plainly and prominently advertise the name and telephone number of the person who holds the business license to operate the vehicle. Such advertisement shall be permanently affixed to both sides of the vehicle in a manner that prohibits the transfer of the advertisement from one vehicle to another.

(b) A schedule of rates and hours of operation shall be marked on the side of the taxicab so as to be plainly visible to persons seeking to engage such vehicle for hire and shall be filed with the business license office by the licensee.

(c) Each taxicab shall have a taxi rooflight mounted on the roof of the vehicle. Such rooflight shall have a lighting system functional for nighttime operation.  
(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-356. Interior requirements of vehicles for hire.**

(a) The interior of each vehicle for hire shall be maintained in a clean condition, free of foreign matter and offensive odors. There shall be no litter in the vehicle or trunk and the seats shall be kept clean and without holes or large wear spots.

(b) All vehicles for hire shall present a clean environment for passengers.

(c) The telephone number of the business license office shall be prominently displayed within the taxicab, designating such number as the number to call when filing complaints.

(d) Permittees and licensees shall be responsible for compliance with this section.  
(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-357. Parking of taxicabs.**

The driver of a taxicab shall not park upon any street in any business district at any place other than at a taxicab stand, except that this section shall not prevent the driver of such vehicle from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in loading and unloading passengers, and from making emergency repairs.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-358. Daily dispatch log sheets.**

In order to maintain a license to operate a vehicle for hire service, a licensee must maintain daily dispatch log sheets, which shall be kept on file at the licensed business premises for a minimum of one year. Dispatch log sheets shall indicate all passengers carried, the time, place of entry and destination of each passenger, the amount charged and an itemization of any personal property left in the vehicle for hire.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-359. Cruising.**

Operators of taxicabs are prohibited from cruising. Cruising is defined as moving about the streets of the city or any private property for the purpose of picking up and transporting passengers who have not previously requested such service by telephone or by personal command. Licensees under this article are responsible for ensuring that no driver participates in cruising.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-360. Call jumping.**

Licensees under this article shall not participate in nor allow their drivers to practice call jumping or the act of intercepting a passenger who has requested service from another company.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-361. Appearance and hygiene of drivers.**

Drivers of vehicles for hire must practice good personal hygiene and wear proper dress while operating a vehicle for hire. Proper dress shall mean the wearing of shoes, ankle-length pants, a shirt or blouse with sleeves and collar. Hats must be of the baseball style or chauffeur's cap. Clothing must be clean and not visibly soiled.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-362. Business audits.**

Each person licensed to do business under the provisions of this article, including limousine carriers, shall be subject to audit by the city. The city shall conduct such audit at reasonable times and with prior notice to the licensee.

(Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-363. Drivers' duties and responsibilities.**

(a) Drivers of taxicabs shall notify their dispatcher of any personal property left in the vehicle for hire and such property shall be noted on the daily dispatch log sheets. Within 24 hours of discovery of any personal property left by a passenger, a driver shall forward such property to the police department or to its company's headquarters. Licensees shall maintain an accurate log of all private property held by them and the names of all persons claiming and receiving such property for a minimum of one year.

(b) A driver shall take the most direct route to a passenger's destination unless otherwise authorized or directed by the passenger.

(c) It shall be unlawful for any driver of a vehicle for hire who is not permitted and for any person who is not licensed to solicit or engage passengers within the city.

(d) No driver shall refuse to accept a passenger unless the passenger is obviously intoxicated or dangerous.

(e) No driver shall refuse to accept a passenger solely on the basis of race, color, national origin or religious belief.

(f) No driver shall be permitted to carry nonpaying passengers in a taxicab while transporting a paying passenger or passengers except for the purpose of driver training.

(g) It shall be unlawful for a driver to operate his vehicle in a manner which threatens a passenger or anyone else, or to threaten or otherwise abuse a passenger.

(h) It shall be unlawful for a driver to discharge any passenger before reaching the passenger's destination unless the driver has a reasonable belief that the passenger is dangerous, or unless street or area conditions do not permit a safe discharge to either the passenger or driver.

(i) No television sets may be operated on the front seat on which the driver sits inside of a moving vehicle.

(j) It shall be unlawful for drivers to drive, or for companies or other entities to allow to be driven, any vehicle for hire which does not have a valid inspection sticker, is not validly insured or, if a taxicab, has an unsealed or improperly working taxifare meter.

(k) Persons or other entities operating a taxicab service or as a sedan carrier shall be prohibited from allowing such vehicles to be operated by persons not holding valid operator permits.

(l) Drivers shall not be required to carry more than \$15.00 in change.

(m) Upon request of a passenger of a taxicab, drivers shall give receipts showing the amount of fare paid, name of company, license number, number of passengers, location of trip origination and location of trip termination. Upon request of a passenger of a sedan carrier, drivers of sedans shall give receipts showing the amount paid.

(Ord. No. 2003-44, § 1, 9-15-03)

#### **Sec. 22-364. Complaints; records; hearings.**

(a) The business license office shall be responsible for receiving complaints concerning the operation of vehicles for hire in the city. Pursuant to sections 22-355 and 22-356, the telephone number of the business license office shall be prominently displayed outside and inside the taxicab and shall designate such number as the number to call for filing complaints.

(b) The business license office shall maintain true and accurate records of the names and identification numbers of each driver permitted to drive vehicles for hire and each business licensed to operate a taxicab service or as a sedan carrier, together with other requirements of this article, and shall maintain a log of all complaints for each operator and licensee. If the business license office shall receive any article violation complaints concerning a particular operator, or three violation complaints concerning a licensee, the business license office shall notify the operator and licensee of the complaints if the business license supervisor sets a

hearing on such complaints or suspends the operator's permit or business license. The operator or licensee will have the right to show cause that he is in compliance with the rules and regulations of this article.

(c) A hearing shall be set before the license review board no later than 30 days after the supervisor has notified the licensee or permittee of a hearing or has suspended a permit or license. The operator may use witnesses or other evidence to show his compliance with the ordinances of the city. If the license review board shall determine a violation on the part of the operator or licensee of the ordinances of the city, it may suspend or revoke the operator's permit or recommend to the mayor and council suspension or revocation of the business license.

(d) The business license office shall maintain a true and accurate log of each complaint showing the name of the complainant, the address of the complainant and the substance of the complaint. Such records shall be available to the operator and licensee, and shall be deemed a public record.

(Ord. No. 2003-44, § 1, 9-15-03)

#### **Sec. 22-365. Reciprocity with other counties and municipalities.**

The mayor and council are authorized from time to time to adopt operator permit fees, vehicle permit sticker fees, and/or other regulatory fees for companies and drivers operating or otherwise doing business within the city. The city shall make no distinction between companies and drivers having locations within the city and those without locations within the city in determining the amount of and imposing and collecting such fees. (Ref. O.C.G.A. 48-13-8(b))

(Ord. No. 2003-44, § 1, 9-15-03)

#### **Sec. 22-366. Enforcement and penalty.**

(a) The police department and the business license office shall enforce the regulations contained in this article.

(b) Violations of the provisions of this article shall be punished by the payment of fines up to \$1,000.00 or imprisonment up to six months, or both. Each separate occurrence shall be deemed a separate offense.

(c) The violation of the provisions of this article by any person, corporation, partnership or other entity, whether a licensee or permittee, may be enjoined by instituting appropriate proceedings for injunctions in the courts of competent jurisdiction in this state. Such actions may be maintained notwithstanding that other adequate remedies at law exist. Such actions may be instituted in the name of the governing authority of the city.

(d) Violations of any provision of this article by any licensee shall be due cause for revocation of any Cobb City business license, after notice and hearing before the mayor and council of the city of Kennesaw.

(e) Violations of any provision of this article by any permittee shall be due cause for revocation of any permit after notice and hearing as provided in this article.

(f) The remedies set forth in subsections (a) through (e) of this section are cumulative to each other.

(Ord. No. 2003-44, § 1, 9-15-03)

**Secs. 22-367—22-380. Reserved.**

## DIVISION 2. BUSINESS LICENSES AND VEHICLE PERMITS

### **Sec. 22-381. License requirements generally.**

(a) No person shall engage in the business of operating vehicles for hire, except limousines, in the city without first having been issued a business license. Limousine carriers and other vehicles not regulated by this article but engaged in the business of vehicles for hire which are domiciled within the city must be issued a business license and pay business license fees. All licenses shall be issued by the city business license office.

(b) The license must be posted in public view at the license location.

(c) In order to secure a business license to operate a taxicab service or as a sedan carrier, an applicant must provide information showing its qualifications on a form provided by the business license office of the city, information requested by the police department and must submit to a police clearance consisting of a background investigation and/or fingerprinting. If the applicant is other than a sole proprietor, all partners, officers, managers and stockholders holding a 20 percent or more interest in the company shall be subject to the provisions of this section. An applicant must:

- (1) Be at least 21 years of age.
- (2) Be a citizen of the United States or an alien admitted for permanent residence or a person who has otherwise been granted employment authorization by the United States Immigration and Naturalization Service.
- (3) Not have been convicted, pleaded guilty, pleaded nolo contendere or been on probation or parole, for a period of five years previous to the date of application for the violation of any of the following criminal offenses of the state or any other stated or of the United States: criminal homicide; rape; aggravated battery; mayhem; burglary; aggravated assault; kidnapping; robbery; child molestation; any sex-related offense; driving a motor vehicle while under the influence of intoxicating beverages or drugs; leaving the scene of an accident; criminal solicitation to commit any of these listed offenses; any felony in the commission of which a motor vehicle was used; perjury or false swearing; any crime of violence or theft or possession, sale or distribution of narcotic drugs, barbituric acid derivatives or central nervous system stimulants; provided, however, that all applicants shall be entitled to the full benefits of O.C.G.A. § 42-8-60 et seq.,



relating to first offender status. If at the time of application the applicant is charged with any of the offenses prescribed in this subsection, consideration of the application shall be suspended until entry of a plea or verdict or dismissal.

- (4) Provide a copy of the rate schedule and the daily hours of operation.
- (5) Provide the name, address and telephone number of a responsible individual who is a fulltime employee in a management position of the applicant residing in the city who will be the registered agent for the purpose of serving of process.
- (6) Provide proof of insurance pursuant to section 22-382.
- (7) Provide information and verification pursuant to section 22-383.
- (8) Provide the address of an office staffed by company agents or employees, including a dispatcher, that will be open between the hours of 7:00 a.m. and 7:00 p.m., and during any additional hours that any vehicle for hire associated with that company is being operated.

(d) All taxicab companies and vehicle for hire companies shall submit to the city business license division a list containing each make, model, separate vehicle number, vehicle identification number, tag number, and insurance for each taxicab or vehicle.

(e) All licenses obtained through the business license office of the city for taxicab companies or other entities shall not be transferable.

(f) Any license holder shall have at all times that taxicab services are offered within the city, an interpreter who can communicate in English with the city or emergency personnel.  
Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-382. Insurance coverage.**

(a) An applicant for a business license to operate a taxicab service or as a sedan carrier shall provide with the application proof of a single motor vehicle insurance policy which documents that all vehicles are to be used as a vehicle or vehicles for hire, covering public liability and property damage issued by an insurer authorized to do business in the state and in the applicant's name, which insurance shall have a term of at least six month in the following amounts per vehicle:

- (1) \$25,000.00 per death or bodily injury per person.
- (2) \$50,000.00 per death or bodily injury per occurrence.
- (3) \$25,000.00 personal property damage.

Should the state law which requires motor vehicle liability minimum insurance coverage as evidence of security for bodily injury and property damage liability (O.C.G.A. § 40-9-1 et seq., the Motor Vehicle Safety Responsibility Act) be changed to require greater minimums in any category of liability listed in subsections (1) through (3) of this subsection, the minimum amounts listed in this subsection shall be automatically amended to require such amounts upon the effective date such legislation with no additional notice to the public and no formal

action required by the mayor and council. Additionally, should there be enacted at any time laws affecting requirements of vehicles for hire particularly, this article will automatically incorporate such requirements with no additional notice to the public and no formal action required by the mayor and council. Surplus line insurance and direct purchase insurance is not acceptable insurance for coverage of city taxicabs and city vehicles for hire. Applicant must further provide certifications from the insurer or the insurer's agent that notification of the cancellation of the insurance for a vehicle or vehicles of the applicant shall be provided to the department of the city police department that oversees the enforcement of the city's vehicle for hire ordinance.

(b) All persons licensed to operate a taxicab service or as a sedan carrier in the city as of the date of adoption of the ordinance from which this article is derived shall be entitled to continue doing business, provided such person or entity submits to the business license office of the city proof of current insurance in the manner and amounts described above and verification pursuant to section 22-354 on or before Sept. 15, 2003.

(c) Proof of insurance must be submitted in accordance with the term of the individual policy, but in any event at least on an annual basis. Such proof shall be in accordance with requirements established by the business license office.

(d) Before the policy is canceled for nonpayment of premium or other cause, notice thereof shall be given in writing to the business license office of the city at least 30 days before the policy lapses.

(e) A licensee shall report any additional vehicles to be operated pursuant to this article to the business license office and shall provide proof of insurance on such vehicles pursuant to this section.

(Ord. No. 2003-44, § 1, 9-15-03)

#### **Sec. 22-383. Vehicle permit stickers with license.**

A business duly licensed to operate a taxicab service or as a sedan carrier pursuant to this article will be issued, at the time of licensing or at the time of providing proof of insurance as required by subsection 22-382(b), vehicle permitting stickers for each vehicle owned, leased or operated by such business, pursuant to the following conditions:

- (1) The applicant or licensee must:
  - a. List all vehicles to be operated in the business, indicating their make, model, year, VIN, tag number and color, on a form to be provided by the business license office. Each company shall submit a company logo and/or identification/color scheme, which shall not be the same or similar to any other company. The logo and/or identification/color scheme shall be approved by the business license office.
  - b. Execute a verification statement concerning the mechanical safety of each vehicle listed in subsection (1)a of this section pursuant to section 22-354.

- c. Provide proof of insurance for each vehicle listed in subsection (1)a of this section as set forth in section 22-383, along with vehicle registration, both of which must be in the applicant's name.
  - (2) Stickers must at all times be displayed on the passenger's rear side window and in the front windshield, bottom righthand corner for sedan carriers. Each vehicle will be assigned a numbered sticker and that sticker may not be used on any other vehicle.
  - (3) No vehicle to which a permit sticker is affixed may be leased, subleased or otherwise assigned for the purpose of operating a taxicab service or as a sedan carrier under this article.
  - (4) A licensee shall report any additional vehicles to be operated pursuant to this article and shall provide all information necessary and pay all fees required to obtain additional vehicle permit stickers.
  - (5) A fee schedule for vehicle permit stickers will be recommended by the supervisor of the business license office and approved from time to time by the mayor and council. Such schedule will be on file with the clerk of the city, the business license office and the police department. It shall be the responsibility of the licensee to renew vehicle permit stickers annually. Any licensee who fails to timely renew its vehicle permit and pay such fee when due shall pay, in addition to such fee, a separate penalty equal to ten percent of the permit sticker fee for each period of 30 days, or portion thereof, following the due date. To be considered a city business for purposes of determining vehicle sticker permit fees, a business must have or operate out of one or more offices in the unincorporated part of the city. A post office box will not constitute an office.
  - (6) If a business license is suspended, all vehicle permit stickers associated with such license shall be null and void for the period of the suspension. If the suspension is in effect on the annual renewal date of the business license or on the annual renewal date of the vehicle permit sticker, then immediately upon the suspension ending, such person or entity shall renew its license and vehicle permit stickers.
- (Ord. No. 2003-44, § 1, 9-15-03)

**Sec. 22-384. Denial, suspension and revocation of business license; hearing.**

(a) A business license or an application for a business license under this article may be denied, suspended or revoked for due cause as defined in subsection (d) of this section. A business license shall be granted by the supervisor of the business license office if the application meets all the legal requirements of this article and the police department provides a clearance consistent with the requirements of this article. If the application does not meet all the legal requirements of this article or the police department does not provide a clearance on the application, it shall not be granted by the supervisor of the business license office. Any decision of the supervisor shall be final unless an appeal is filed by any aggrieved party within ten days from the date of notice to the applicant regarding the denial of the application. The appeal shall be to the license review board as provided for in section 2-115 of this code.

(b) Upon summary consideration of facts that indicate due cause under subsection (d) of this section, the supervisor of the business license office may suspend a license under this article. The suspension shall be reported in writing to the mayor and council and the mayor and council will review such action at the next regularly scheduled public meeting. A notice shall be sent to the licensee setting forth the time, place and purpose of the meeting. After a hearing, if the mayor and council determines due cause to exist, the board may suspend, revoke or place on probation for a maximum of 12 months, with or without conditions, the license or licensee.

(c) A business license previously issued by this city may be revoked only after a hearing before the mayor and council upon a prior written notice to the licensee setting forth the time, place and purpose of such hearing and a statement of the reason why the license would be revoked. Unless the circumstances justify otherwise, three days' notice shall be deemed reasonable, but shorter or longer periods of notice shall be authorized as the mayor and council may deem the circumstances justify. The hearing shall be held no later than 30 days after the supervisor notifies licensee of a hearing before the mayor and council. The hearing before the mayor and council shall follow the procedures specified in section 6-63 of this code. After a hearing, if the mayor and council determines due cause to exist, the board may suspend, revoke or place on probation for a maximum of 12 months, with or without conditions, the license or licensee.

(d) A business license may be denied, suspended or revoked for any of the following reasons:

- (1) Where the applicant furnishes fraudulent or untruthful information or omits information requested in the application for a business license.
- (2) For failure to pay all fees, taxes, penalties or other charges imposed by the provisions of this article, as they may be amended.
- (3) For failure to maintain all of the general qualifications applicable to the initial issuance of a license.
- (4) For violation of any part of this article by the licensee, its agents, partners, officers, employees or contractors.
- (5) Allowing the required insurance coverage to lapse.
- (6) Allowing taxicabs to operate in the city that do not meet the requirements and standards adopted by the mayor and council pursuant to section 22-54.
- (7) Three violation complaints received pursuant to section 22-364 and determined to be valid by the license review board.

(e) Licensees under this article are responsible for violations of this article by their vehicle operators, whether such operators are direct employees or independent contractors.

(Ord. No. 2003-44, § 1, 9-15-03)

**Secs. 22-385—22-390. Reserved.**

## DIVISION 3. DRIVER PERMITS

**Sec. 22-391. Regulation of drivers of vehicles for hire.**

(a) No person shall operate a taxicab or sedan without an operator's permit issued by the police department. No business licensed to operate a taxicab service or as a sedan carrier shall employ any driver who has not been issued an operator's permit.

(b) Operator's permits shall not be issued to any driver not employed by or representing a licensed company. Proof of employment or representation shall be presented upon application of a permit.

(c) An applicant for a permit must furnish information requested on a form to be provided by the police department and submit to a police clearance consisting of a background investigation and/or fingerprinting. Operator permit applicants must meet the following requirements:

- (1) Be at least 21 years of age; provided, however, any driver between the age of 18 and 21 who was operating a taxicab on or before the effective date of the ordinance from which this article is derived shall not be subject to this age provision.
- (2) Be a citizen of the United States or an alien admitted for permanent residence or a person who has otherwise been granted employment authorization by the United States Immigration and Naturalization Service.
- (3) Possess a current, valid Georgia state driver's license, which must not be limited as defined in O.C.G.A. §§ 40-5-58 and 40-5-64.
- (4) Exhibit a proficiency with the English language so as to be able to comprehend and interpret traffic signs, issue written receipts to passengers and obey lawful orders of police and others in lawful authority.
- (5) Not have been convicted, pleaded guilty, pleaded nolo contendere or been on probation or parole, for a period of five years previous to the date of application, for the violation of any of the following criminal offenses of the state or any other state or of the United States: criminal homicide; rape; aggravated battery; mayhem; burglary; aggravated assault; kidnapping; robbery; child molestation; any sex-related offense; driving a motor vehicle while under the influence of intoxicating beverages or drugs; leaving the scene of an accident; criminal solicitation to commit any of these listed offenses; attempts to commit any of these listed offenses; any felony in the commission of which a motor vehicle was used; perjury or false swearing; any crime of violence or theft, or possession, sale or distribution of narcotic drugs, barbituric acid derivatives or central nervous system stimulants; provided, however, that all applicants shall be entitled to the full benefits of O.C.G.A. § 42-8-60 et seq., relating to first offender status. If at the time of application the applicant is charged with any of the offenses prescribed in this subsection, consideration of the application shall be suspended until entry of a plea or verdict or dismissal.

(d) All operator permits automatically expire two years from the date they are issued. It shall be the responsibility of the operator to renew his permit and pay the applicable fee.

(e) Drivers are responsible for reporting any change in qualifications or status from information previously supplied to the police department within ten days of such change.

(f) Operator permits must be posted on the dash or sunvisor of the vehicle being driven so that it is visible from the passenger area. Drivers of sedans must have their operator's permits in their possession and they must be visible to passengers. Licensees under this article are responsible for checking to ensure that each driver has a current operator's permit in his possession and that such permit is posted on the dash or sunvisor of the vehicle being operated.

(g) A schedule of permit fees, as adopted from time to time by the mayor and council, shall be posted in the offices of the clerk of the city and the police department. Any permittee who fails to timely renew his permit and fails to pay such fee when due shall pay, in addition to such fee, a separate penalty equal to ten percent of the required fee, for each period of 30 days, or portion thereof, following the due date. If the fees adopted from time to time by the mayor and council provide for different fees for city drivers/operators than for noncity drivers/operators, to be considered a city driver/operator and pay fees associated therewith, a driver must have or operate out of one or more offices in the unincorporated part of the city; a post office box will not constitute an office. Proof of a current lease, if applicable, for the company premises, an affidavit as to ownership or occupancy or proof of association with a city licensee must be submitted to the police department upon request.

(Ord. No. 2003-44, § 1, 9-15-03)

#### **Sec. 22-392. Denial, suspension, revocation of permits; hearing.**

(a) An operator's permit or an application for an operator's permit under this article may be denied, suspended or revoked for due cause as defined in subsection (d) of this section. An operator's permit shall be granted by the chief of police or his designee if the application meets all the legal requirements of this article and the police department provides a clearance consistent with the provisions of this article. If the application does not meet all the legal requirements of this article or the police department does not provide a clearance on the application, it shall not be granted by the chief of police or his designee. Any decision of the chief or his designee shall be final unless an appeal is filed by any aggrieved party within ten days from the date of notice to the applicant regarding denial of the application. The appeal shall be to the license review board as provided for in section 2-115 of this Code.

(b) The chief of police or his designee may suspend or revoke an operator's permit for due cause as defined in subsection (d) of this section. The suspension or revocation shall be reported in writing to the license review board, and the license review board will review such action at the next regularly scheduled meeting. A notice shall be sent to the permittee setting forth the time, place and purpose of the meeting. After a hearing, the license review board may affirm the decision of the chief to suspend or revoke the permit, or place on probation for a maximum of 12 months, with or without the conditions, the permit or operator. If the decision of the chief is disaffirmed, the permit shall be returned to the permittee immediately.

(c) The decision of the license review board shall be final unless appealed as provided for in section 2-115 of this Code.

(d) An operator's permit may be denied, suspended or revoked for any of the following reasons:

- (1) Violation of any part of this article.
- (2) Where the applicant furnishes fraudulent or untruthful information or omits information requested in the application for a permit.
- (3) Failure to pay any fees imposed by the provisions of this article.
- (4) Failure to maintain all the general qualifications applicable to the initial issuance of a driver's permit.
- (5) Having four or more moving traffic violations in any 12-month period.
- (6) Refusing to accept a passenger solely on the basis of race, color, national origin or religious belief.
- (7) Operating a vehicle with knowledge, actual or implied, that the required insurance coverage is not current or has lapsed.
- (8) Operating a vehicle in a manner which threatens a passenger or anyone else.
- (9) Operating a vehicle the driver knows or should know is not in compliance with the motor vehicle safety standards approved by the mayor and council.
- (10) The permit applicant, during the 12-month period next preceding the filing of his application, has suffered a revocation of his operator's permit.
- (11) A complaint is received pursuant to section 22-364 and determined to be valid by the license review board.

(e) Notwithstanding any of the provisions in this section, any permits issued through administrative error or an error in the completion of a background investigation may be terminated by the chief of police or his designee.

(Ord. No. 2003-44, § 1, 9-15-03)